

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3 TED MICHAEL DONKO,) No. 83037

4 Appellant,)

5 v.)

6)

7 THE STATE OF NEVADA,)

8 Respondent.)

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10 **APPELLANT'S APPENDIX VOLUME IV PAGES 707-944**

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1 THE WITNESS: Yeah.
2 THE COURT: That's okay.
3 THE WITNESS: My bad, y'all. Don't --
4 THE MARSHAL: I'll put it in the side room.
5 THE COURT: He'll --
6 THE WITNESS: All right. Thank you.
7 THE COURT: He'll help you. You'll get them back, I
8 promise.
9 THE WITNESS: All right. Take --
10 THE COURT: Okay.
11 THE WITNESS: -- both of them, please. Because I don't
12 want nobody to be, like, doo, doo, doo, doo, doo.
13 MS. GOODMAN: No problem, DeAndre.
14 BY MS. GOODMAN:
15 Q Okay. So the first one you described still as a Mexican
16 and the first -- the first one you described is how tall? Short?
17 A 5-11, around that height, 5-11, 5-8, somewhere.
18 Q Okay. And you described the defendant as what?
19 A 5-8, 5-11, around that height.
20 Q Okay. So just approximately that height?
21 A Uh-huh.
22 Q All right. Did you see any tattoos on him at that time?
23 A No, I didn't see no tattoos because I tried to get up and get
24 in the house, because I was too scared.
25 Q Okay. Did you see any facial hair at that time?

1 A No.

2 Q Were you looking at them like that?

3 A I was not looking at them like that.

4 Q Okay.

5 A I was trying to get up and get in the house.

6 Q Okay. Now, on September 30th, did they -- what kind of

7 car did they pull up in?

8 A A Toyota.

9 Q Okay.

10 A Like a 1996, a '95.

11 Q So older Toyota?

12 A Yeah.

13 Q Okay. I'm going to go to October 1st, okay, the day after.

14 Were you at 56 Linn Lane here in Clark County?

15 A Yeah. And I was taking out the stuff that my ex-girlfriend

16 asked me to take out of her house.

17 Q Okay. So on October 1st, you were at that same location

18 and you were there because your ex-girlfriend?

19 A Asked me to take out all the stuff that was in her house,

20 the old stuff that she have that she wanted to take out.

21 Q Okay. So in -- now, when -- this is about maybe noonish

22 or so, right around that time?

23 A Yeah.

24 Q Okay. Who was inside of the home?

25 A They kids, two grandkids, two grownups, two -- a girl and

1 a woman, a -- two grown women and one -- no, two children.

2 Q Okay. So there was people inside the home?

3 A Yeah.

4 Q All right. Now, outside the house, who was helping you
5 move this -- these items?

6 A It was two young mens that was around the block that we
7 barely know. And they was helping us, because one of the people
8 that was in the house with me named Vink [phonetic], asked him to
9 help us to clean -- do what we have to do for my ex. And that's --
10 he's not in here --

11 Q Okay.

12 A -- the person that asked the person to help.

13 Q That's okay. So was -- do you know somebody by the
14 name of Fernando?

15 A I don't know him by that name.

16 Q Okay. But you know him -- his name is Fernando now?

17 A Yeah.

18 Q Okay. Was he there?

19 A Yeah.

20 Q Okay. Do you know somebody named Johnny?

21 A Yeah.

22 Q Was he there?

23 A Yeah.

24 Q Okay. And do you know somebody named Gilbert?

25 A Yeah.

1 Q Okay. Was he there?

2 A Yeah.

3 Q Okay. And then the person that you had described at
4 Binks [sic] --

5 A Yeah.

6 Q -- that's a -- that's the person that kind of had the house?

7 A Yeah.

8 Q Okay. Now, what, if anything -- now, where were you
9 sitting?

10 A I was sitting in the chair, the same chair they walked up on
11 me with when I was sitting down the first time.

12 Q Okay. So I'm going to show you this picture of him.

13 A That chair right there in the back.

14 Q Okay. Wait a minute, DeAndre. Okay. So there's a
15 mouse. Do you see that mouse right there? Okay. What I want you
16 to do is --

17 A Point to the chair?

18 Q -- go ahead and hit -- do you see that red spot on the
19 bottom that looks like a pencil?

20 A Yeah.

21 Q Go ahead and click that for me.

22 A Okay. [Witness complies.]

23 THE COURT: Click on it.

24 THE WITNESS: I'm trying to.

25 THE COURT: Got it.

1 THE WITNESS: Yep.

2 BY MS. GOODMAN:

3 Q There you go. Okay. And then circle where you were
4 sitting at around 12:15. Okay.

5 MS. GOODMAN: Your Honor, may I approach?

6 THE COURT: Yeah.

7 THE WITNESS: No, I don't know how to --

8 MS. GOODMAN: That's okay. Here, let me try to help you
9 here.

10 BY MS. GOODMAN:

11 Q I'm just going to click this.

12 A Thank you, Judge --

13 Q And then click the red button here.

14 A -- for understanding.

15 THE COURT: Oh, yeah, no problem.

16 THE WITNESS: Because I don't know how to work these
17 computers.

18 BY MS. GOODMAN:

19 Q All right. Now you can control the mouse. Go ahead and
20 just circle where you were sitting around 12:15ish.

21 A Okay. Thank you.

22 Q Oh, click. You've got to click the mouse.

23 THE COURT: Click down.

24 BY MS. GOODMAN:

25 Q Let's just do this. Right where we made that red mark,

1 that's the chair you were sitting in?

2 A Yeah.

3 MS. GOODMAN: And, Your Honor, just for the record,
4 that is the chair that is between the truck and the driveway to the
5 left side of the picture.

6 THE COURT: Sounds good.

7 BY MS. GOODMAN:

8 Q So I'm just clear this for you. Okay?

9 A All right.

10 Q All right. Okay. Now, DeAndre, you were sitting there
11 around 12:15 or so right before?

12 A Yeah.

13 Q Okay. Did you see that same Toyota pull up?

14 A Yeah, I saw it pulled up right here.

15 Q Oh --

16 A Can I put --

17 Q -- just hover it over -- hover over it.

18 A Okay. Right here.

19 MS. GOODMAN: Okay. And, Your Honor, let the record
20 reflect the Toyota pulled up to the right side of the vehicle next to
21 the -- kind of to the street of the blue shopping cart.

22 THE COURT: Okay.

23 BY MS. GOODMAN:

24 Q Okay. And what happened after that?

25 A I just remember shooting. And I saw a white dude come

1 out of the car, the same dude that asked me where Shorty was.

2 Q Okay. And did he point a gun at you?

3 A He pointed at the person in front of me, and that was Vink.

4 Q Okay. Did that individual start shooting?

5 A Yeah.

6 Q Okay. Towards your direction?

7 A Yeah.

8 Q Okay. Now, this is going to be a stupid question, but were

9 you in fear of your life?

10 A Yeah.

11 Q Okay.

12 A I tried to get up and get the hell [indiscernible]. You see

13 the chair. The chair got the -- all the bullets --

14 Q I gotcha.

15 A -- that were supposed to get me.

16 Q Okay. And did he say anything when he exited the

17 vehicle?

18 A He said, Fuck Shorty, and he got started letting off.

19 Q Okay. And do you remember how many -- about how

20 many shots?

21 A I don't remember. I was just trying to get out of the way.

22 Q I'm sorry?

23 A I tried to get out of the way.

24 Q Okay. You tried to get out of the way? Okay.

25 And to be fair, you -- and we'll get there -- you described

1 that individual as a Hispanic male to the police officers?

2 A Yes, I did.

3 Q Okay. Now, the driver of that vehicle, do you recall if you

4 recognize that person?

5 A No.

6 Q Okay.

7 A I don't remember him.

8 Q Okay. All right.

9 THE COURT: I'm sorry, say it again, you what?

10 THE WITNESS: I don't really remember him.

11 THE COURT: Okay.

12 BY MS. GOODMAN:

13 Q Okay. Now, what was the person who shoot --the person

14 who shot, which you identified as who?

15 A The person sitting in the back of you in the blue tie and

16 blue shirt.

17 Q Okay. Who you identified as the defendant; what was he

18 wearing?

19 A He was wearing a red shirt.

20 Q Okay. Now, where did you -- did you see the car leave?

21 A When it left, I saw it go towards --

22 Q Oh, hold on. I'm going to show you State's Exhibit 2.

23 A Towards Thompson.

24 Q Okay. Let me zoom out real quick. Hold on.

25 A Right here.

1 Q Okay. So you see where that red balloon is that says --
2 A I know.
3 Q -- 56 North Linn?
4 A Yeah, I see it.
5 Q Okay.
6 A What you talking about.
7 Q All right. And which direction, just move the mouse in the
8 direction of where he left?
9 A He left this way.
10 Q I'm sorry, what was that?
11 A You see where the mouse at?
12 Q Yep.
13 A That's right.
14 Q Okay. So --
15 A Towards Charleston.
16 Q He headed south towards Charleston.
17 A Yep.
18 MS. GOODMAN: And, Your Honor, just let the record
19 reflect he's moving the mouse from the red balloon south, in a
20 southward direction towards Charleston.
21 THE WITNESS: Sorry, it was Charleston.
22 THE COURT: Okay.
23 BY MS. GOODMAN:
24 Q Okay. Now, you stayed there and you're familiar with that
25 area, DeAndre?

1 A Yeah, I know the area, not that well, but well enough to be
2 around.

3 Q Okay. So this is Charleston where I'm highlighting here
4 where it says East Charleston?

5 A Yeah.

6 Q Okay. And I'm going to move my pen all the way down to
7 where it says North Christie, right here; do you see that?

8 A Yeah. And that's the way they went.

9 Q Okay. So now when -- if you go up Christie, can you get
10 back into your neighborhood?

11 A Yeah, you can't go that way. That way you turning your
12 pen at, that way.

13 Q Uh-huh.

14 A And then you -- go to the other way, towards the two-way,
15 you can't go on that street. But that's the main street, you can't go
16 in right there too.

17 Q Okay. So you can go in any of these streets here off of
18 this Christie Lane?

19 A Uh-huh. Yeah.

20 Q Okay. All right. DeAndre, do you remember -- oh, do you
21 remember seeing the impacts to the house?

22 A I only saw two holes in the garage.

23 Q Okay.

24 A And I didn't even check out the -- where the other bullets
25 went.

1 Q Okay.

2 A I saw the truck got hit two times or three, I don't know.

3 Q Okay. So let's talk about the impacts to the house. Were
4 those there before?

5 A No.

6 Q Okay. So those were caused by the --

7 A The bullets that --

8 Q -- bullets that day?

9 A -- came in the car.

10 Q Okay. All right. Now, do you recall on
11 October 9th, 2019 --

12 MS. GOODMAN: And, I'm sorry, Your Honor. Court's
13 brief indulgence.

14 Q On October 9th, 2019, you talking to a detective?

15 A Yeah.

16 Q Okay. And do you recall him doing something called a
17 photo lineup?

18 A Yeah.

19 Q All right. I'm going to show you State's Exhibit 202, all
20 right? Do you recall that photo lineup witness instruction?

21 A Yes.

22 Q Okay. And is that your name, DeAndre Woods?

23 A Yep.

24 Q Okay. And date and time, 10/9/2019?

25 A Yeah.

1 Q Okay. And where it says sign here --

2 A Yep.

3 Q -- is that your signature?

4 A Yep.

5 Q Okay. And in this photo lineup, witness instruction, I'm
6 going to read it, okay? It says -- unless you want -- do you want
7 to -- can you see it from up there? Do you want me to hold it for
8 you? Or do you want me --

9 A I want you to read it.

10 Q What's that?

11 THE COURT: He wants you to read it.

12 BY MS. GOODMAN:

13 Q Okay. So it says:

14 In a moment, I am going to show you a group of
15 photographs. This group of photographs may or may not
16 contain a picture of the person who committed a crime now
17 being investigated. The fact that the photos are being shown to
18 you should not cause you to believe or guess that the guilty
19 person has been caught. You do not have to identify anyone. It
20 is just as important to free innocent person from suspicion as it
21 is to identify those who are guilty. Please keep in mind that
22 hairstyles, beards, and mustaches are easily changed. Also,
23 those are --

24 I'm sorry.

25 -- also, photographs do not always depict the true

1 complexion of a person. It may be lighter or darker than shown
2 in the photo. You should pay no attention to any markings or
3 numbers that may appear on the photos. Also, pay no attention
4 to whether the photos are in color or black and white, or any
5 other differences in the type of style of the photographs. You
6 should study only the person shown in each photograph.
7 Please do not talk to anyone other than police officers while
8 viewing the photos. You must make up your own mind and not
9 be influenced by other witnesses, if any. When you have
10 completed viewing all the photos, please tell me whether or not
11 you can make an identification. If you can, tell me in your own
12 words how you are of your identification. Please do not indicate
13 in any way to other witnesses that you have or have not made
14 an identification. Thank you.

15 Do you remember having that read to you or reading that?

16 A Yeah, I had somebody read it to me.

17 Q Okay. So somebody actually read that out loud --

18 A Yeah.

19 Q -- like I just did?

20 A Yeah.

21 Q Okay. And then you were showed State's Exhibit 203.

22 A And I picked the one right here in the middle of the
23 second line.

24 Q Okay. So all that -- the circles that -- that is the person that
25 you identified?

1 A Yep.

2 Q Okay. Is that Number 5?

3 A Yep.

4 Q Okay. And are those your initials that are underneath it?

5 A Yep.

6 Q Okay. And then back to that statement part of the photo

7 lineup witness instruction on State's Exhibit 202, you wrote there:

8 By the person that shot at me and was asking for Shorty.

9 A Yep.

10 Q 95 percent sure?

11 A Yep.

12 Q Okay. Now, DeAndre, how -- why were you only 95

13 percent sure?

14 A Because the person on the picture --

15 Q Let me -- hold on, let me show you 203.

16 A -- had a -- his head was straight, a little bit down.

17 Q So his -- so the person that you saw, the hair was shorter?

18 A Uh-huh.

19 Q Okay. So that's why you were 95 percent sure?

20 A Yeah.

21 Q Okay. DeAndre, you remember -- you remember

22 testifying at a preliminary hearing and at that time, you identified

23 the defendant as well as -- correct?

24 A Yeah.

25 Q So today you also identified the defendant?

1 A Yeah.

2 Q Correct? How sure are you now that you see him in
3 person?

4 A Like, right now, like, I know it's him.

5 Q Okay. So you know it's this guy?

6 A [No audible response.]

7 Q Now, when you learn later on that you've described him
8 as Hispanic, but you learned that he was actually white, did that
9 change your identification of him?

10 A No.

11 Q Okay. Now, you said he had no tattoos at first. Seeing
12 that he has tattoos, does that change your mind about his -- the
13 person that shot?

14 A I was not focused on tattoos. I was trying to get out of the
15 way.

16 Q Okay. If when -- the fact that he has hair now, does that
17 make you any less sure that that is this individual who shot you?

18 A It's not -- no. It don't make me feel like that at all.

19 Q Okay.

20 MS. GOODMAN: Court's brief indulgence, Your Honor.
21 Your Honor, I'll pass the witness.

22 THE COURT: Mr. Hauser, cross-examination.

23 MR. HAUSER: Judge, may I approach the clerk?

24 THE COURT: Yeah.

25 MR. HAUSER: Thank you.

1 [Pause in proceedings.]

2 **CROSS-EXAMINATION**

3 BY MR. HAUSER:

4 Q Good afternoon, Mr. Woods.

5 A Good afternoon.

6 Q Want to talk to you about the person that you saw on
7 October 1st and on September 30th, okay? All right.

8 You were hanging out with your buddies on October 1st,
9 right?

10 A That was not my buddies.

11 Q You don't know them?

12 A Uh-uh.

13 Q Okay.

14 A They were people on the streets.

15 Q Okay. How about Fernando?

16 A People on the streets.

17 Q Okay. But you know what they look like?

18 A Yeah.

19 Q All right. They look like Mexican guys, right?

20 A Yeah.

21 Q Okay. You described the shooter in this case as a Mexican
22 guy?

23 A Yeah.

24 Q Okay. So somebody that looks like Fernando and
25 Johnny?

1 A Yeah.

2 Q Let's chat a little bit about what happened during the
3 shooting. So you said that somebody pulled up and started firing
4 almost immediately, right?

5 A Yeah.

6 Q They said, Fuck Shorty, and then started shooting, right?

7 A Start to shoot me.

8 Q Apologize for the language.

9 A After that he said, Fuck Shorty.

10 Q And at that point, you did the reasonable thing and tried
11 to get out of the way, right?

12 A Yeah.

13 Q Where did you go?

14 A Ran towards almost the gate.

15 Q Okay. What were you hoping to hide behind at the gate?
16 Because you weren't hiding behind the gate, right? Like, that's
17 pretty see-through.

18 A I know that.

19 Q But -- so you was just trying to get behind something
20 else?

21 A Yeah.

22 Q Did you find anything?

23 A Behind the house. The other house, the next-door
24 neighbor.

25 Q Got it. Did you get behind the house?

1 A No.

2 Q Okay. How far did you get?

3 A Half way --

4 Q Okay.

5 A -- towards that gate.

6 Q Okay. And that's when the car drove --

7 A And that's when the other dude fell in front of me.

8 Q What other dude?

9 A What's his name? I don't -- I can't --

10 Q One of the guys that got shot?

11 A Yeah.

12 Q Okay. Not the shooter, he didn't fall?

13 A No.

14 Q Got it. And then you said the car drove off, right?

15 A Uh-huh.

16 Q Car drove up to where Charleston --

17 THE COURT: One second, Mr. Hauser.

18 Is that a yes?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 MR. HAUSER: Thanks, Judge.

22 BY MR. HAUSER:

23 Q All right. So to show you State's 2, we just looked at that

24 a little bit on direct. I'm just going to indicate with my pen a little

25 bit on here. You said the car went from Linn Lane toward

1 Charleston down here, right?

2 A Yep.

3 Q Okay. Now, you made a statement on the 1st when you
4 spoke to the police, right?

5 A Yes.

6 Q You wanted to give them as much information as
7 possible?

8 A Yeah.

9 Q Because you wanted them to catch the people who --

10 A Who came --

11 Q -- almost shot you?

12 A Yeah.

13 Q So you were trying to be as helpful as you could.

14 A Yeah.

15 Q And on that day, you told the police that when they got to
16 Charleston, they turned left, right?

17 A If it was left or right.

18 Q Well, we got to know one way or the other, right? It can't
19 be both.

20 A Because I tried to get out of the way and get out of the
21 situation.

22 Q And I'm not blaming you for that at all. I'm just trying to
23 hammer out some details. You did the right thing, you got out of
24 there, you didn't get shot.

25 A I just know they left for on towards Charleston.

1 Q Okay?

2 A Which way, I thought they left on the left, like, look on the
3 paper right here, where you got a pink thing, they went towards
4 my -- if I was walking, it would have been on my right.

5 Q If you were walking?

6 A Yeah.

7 Q Okay. Now, what you told the police that day was that
8 they turned towards your buddy's truck, right?

9 A Yeah.

10 Q Okay. Now, your buddy's truck is on this side of Linn
11 Street?

12 A Yeah.

13 Q And if your buddy's truck's on this side of Linn Street, and
14 they turn toward it, it meant they turned and went this way down
15 Charleston, right?

16 A No.

17 Q No?

18 A This way.

19 Q Okay.

20 A On Charleston.

21 THE COURT: So when he says this way and you say this
22 way, would you mind putting on the record --

23 MR. HAUSER: Absolutely.

24 THE COURT: Thank you.

25 BY MR. HAUSER:

1 Q So when I'm saying they turned towards your buddy's
2 truck, that would mean they turned left?

3 A They went towards the -- Linn Lane towards Charleston,
4 the -- towards Christie Land.

5 Q Remember, we know they went toward Charleston. I'm
6 trying to determine where they went when they got to Charleston.
7 You told the police --

8 A Towards Christie Lane.

9 Q Okay. Now, you told the police on October 1st, the day
10 that it happened, that they turned in direction of your buddy's truck,
11 right?

12 A Yeah. They turned that way, they turned towards the --
13 Charleston.

14 Q Okay. Now, your buddy's truck is on the left side of the
15 street if you're going south, isn't it?

16 A My buddy's car was going towards this way. The other
17 car was going the other way.

18 Q All right. Let's talk a little bit about the person that you
19 saw that day. You said that it was the same person you saw on
20 both days, right?

21 A Yep.

22 Q All right. That person was 5-11 or 5-8?

23 A Yeah.

24 Q All right. Wear a red shirt?

25 A Yep.

1 Q Mexican guy?

2 A Yeah.

3 Q No facial hair?

4 A I didn't really try to look at him like that. I was looking in
5 his eyes.

6 Q Okay. What color were his eyes?

7 A Blue.

8 Q All right. What color was his facial hair?

9 A I really was not looking at his facial hair and stuff like that.
10 He was far for me to --

11 Q But, Mr. Wood --

12 A -- see his face.

13 Q We talked a little bit about the statement --

14 A No hair.

15 Q -- you made to the cops, right?

16 A Yeah.

17 Q Now, you didn't tell the cops that you didn't get a look at
18 the guy, did you?

19 A I got a look at him a little bit, a glance.

20 Q Okay. And when the cops asked if you had -- if he had any
21 facial hair, you didn't say I don't know, did you?

22 A I told them I didn't know, because I really didn't know.

23 Q Are you sure you told them you didn't know?

24 A No facial hair, he didn't have.

25 Q Say that again?

1 A He didn't have no facial hair.

2 Q That he didn't have any facial hair --

3 A He had --

4 Q -- that's what you told the police on October 1st?

5 A Shaved mustache.

6 Q He had a mustache?

7 A Shaved face.

8 THE COURT: A shaved face.

9 BY MR. HAUSER:

10 Q Okay. A shaved face. Right. No facial hair is what the
11 shooter had?

12 A Uh-huh.

13 Q And they asked you -- is that a yes?

14 A Yes.

15 Q Okay. Sorry, it's a natural reaction to say uh-huh. Had the
16 same problem with the last witness, not a big deal. We have to say
17 yes just so it records.

18 A Okay.

19 Q They also asked you for other descriptive information,
20 right?

21 A Yeah.

22 Q The police did?

23 A Yeah.

24 Q And you were trying to be as helpful as possible?

25 A Yeah.

1 Q So you told them he was a Mexican dude, right?

2 A Yeah.

3 Q Told them he was 5-11 or 5-8?

4 A Yeah.

5 Q No facial hair?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes.

9 Q No worries.

10 And no tattoos?

11 A No tattoos.

12 Q All right.

13 A I didn't really realize no tattoos.

14 Q Well, hold on. Now, you didn't say, I didn't see if there

15 were any tattoos. You told the police on October 1st that the

16 person who shot you had no tattoos, didn't you?

17 A I would see no tattoos, because I tried to get out of the

18 way.

19 Q So if the police asked you if you saw any tattoos and you

20 said no, that is what happened, right?

21 A Yeah. I say no, because I didn't really look at the tattoos

22 as I tried to get in the house.

23 Q All right. You remember giving that interview to the

24 police, don't you?

25 A Yeah.

1 Q All right. Where you were trying to be truthful?
2 A Uh-huh.
3 Q Is that a yes?
4 A Yes.
5 Q Sorry. I'm going to give you an -- apologize, nothing
6 personal. You were trying to be accurate, right?
7 A Yes.
8 Q You were trying to be as helpful as you could?
9 A Yes.
10 Q Because you wanted the guys to get caught?
11 A Yes.
12 Q All right. And so you were certain about your answers
13 when you gave them to --
14 MR. HAUSER: Your Honor, may I approach?
15 THE COURT: Yeah.
16 BY MR. HAUSER:
17 Q Mr. Woods, I'm going to show you the statement that you
18 made to the police on that day. Okay?
19 A Okay.
20 Q All right. And I'm going to not stand over you like that,
21 because that's weird.
22 A Uh-huh.
23 Q Okay. So this is your name at the top, right?
24 A Uh-huh.
25 Q Do you know -- is that a yes?

1 A Yes.

2 Q No worries, happens all the time.

3 All right. So this is the statement you gave to the police,

4 right?

5 A Yes.

6 Q You were talking to Officer Marin?

7 A Yeah.

8 Q Okay. So read along silently with me as I read aloud, on

9 page 4.

10 A I don't like to read.

11 Q What's that?

12 A I don't like to read.

13 Q That's okay. I'll read it for you and you can just tell me

14 that I read it correctly, okay?

15 A Okay.

16 Q All right.

17 A Or not.

18 Q We're looking at page 4 on this statement.

19 Question: Did they have any facial hair?

20 Or, excuse me.

21 Did he have any facial hair?

22 Answer: No, they...

23 Question: Did he have any tattoos?

24 Answer: No.

25 Did I read that correctly?

1 A Yeah. No. Because I was not looking at that.

2 Q All right. So you say no, because you weren't looking at
3 that. But that's not what you told the police that day, right?

4 A I was not sure I saw his tattoos or not.

5 Q Let's talk about his tattoos.

6 A I tried to get up and get out of the way.

7 Q I understand.

8 I'm going to show you what's already been admitted as
9 Defense Exhibit D. I'll put it sideways, that's all right.

10 You don't recognize that tattoos, do you?

11 A No.

12 Q No. But if you'd seen them, you would describe them,
13 right?

14 A I didn't really see no tattoos, because the person -- I didn't
15 really see their arms, because I tried to get up and get out of the
16 way. I only saw that gun.

17 Q Mr. Woods, I understand. We know you were trying to get
18 out of the way. I'm asking if you saw these tattoos on the person
19 who shot you --

20 A No.

21 Q -- you would have told the police you saw them, right?

22 A Yeah, if I saw them.

23 Q All right. Let's look at Exhibit C. That's a lot of tattoos as
24 well, right?

25 A Yeah.

1 Q If you'd seen those tattoos, you would have told the police
2 that you saw them, right?

3 A I really didn't look at nobody tattoos.

4 Q I understand, Mr. Woods. My question is just if you saw
5 those tattoos --

6 A Yeah, I would saw them tattoos face to face, close-up, I
7 was know what it was.

8 Q Right. You would tell the police, right?

9 A Yeah.

10 Q And it's pretty clear that this is not an arm with no tattoos
11 on it, right?

12 A Yeah, you got it.

13 Q All right.

14 MR. HAUSER: Brief indulgence.

15 THE COURT: Sure.

16 BY MR. HAUSER:

17 Q All right. Mr. Woods, when you picked out that lineup,
18 you said you were 95 percent sure, right?

19 A Yeah.

20 Q Not 100 percent sure?

21 A Yeah.

22 Q All right. So there was some room for doubt in your
23 identification?

24 A Yeah.

25 Q So when you looked at that lineup, I'm going to show it to

1 you again, State's 203, not a lot of Mexican guys in that lineup, are
2 there?

3 A No.

4 Q No. It's a lot of white guys, right?

5 A Yep.

6 Q All right.

7 A And the one I'd pick is the one in the --

8 Q Oh, hang tight, Mr. Woods. Don't worry, we're going to
9 do more soon. And they're going to get to question you some
10 more too. Okay?

11 All right. Mr. Woods, when the shooting occurred, you
12 didn't call 911 right away, right?

13 A I didn't -- I was not the one calling 911.

14 Q Right. Someone else called 911?

15 A Yeah.

16 Q So you didn't give the initial description to the police of
17 who did the shooting, right?

18 A The person that called the 911 was not outside.

19 Q Okay. Do you know who it was?

20 A But -- do I know who was the person that called 911?

21 Q Yeah.

22 A Yeah, I did.

23 Q Okay. Were they there?

24 A Yeah, they was there.

25 Q Okay.

1 A They was not outside --
2 Q Okay.
3 A -- when the shooting was going on.
4 Q Okay.
5 A They was inside of the house.
6 Q All right. You also described the shooter as bald that day,
7 right?
8 A Yep.
9 Q Shaved head?
10 A Yep.
11 Q No hair?
12 A No hair.
13 Q And when you say no hair, you're not talking short hair,
14 right?
15 A I'm not --
16 Q You're talking just no hair.
17 A Shaved, like, a little shave, like the dude right there, a little
18 bit shaved off.
19 Q Which dude right away?
20 A Right there. A little bit off, more, a little bit.
21 Q You looked at the officer in the corner?
22 A Uh-huh.
23 Q Okay. Little bit more off than that?
24 A Uh-huh.
25 Q Okay.

1 MR. HAUSER: Brief indulgence, Judge.

2 THE COURT: Yeah.

3 BY MR. HAUSER:

4 Q All right. Mr. Woods, you told us a few moments ago you
5 were trying to get the color of the shooter's eyes, right?

6 A Uh-huh.

7 Q Is that a yes?

8 A Yes.

9 Q I promise I'm going to stop asking it as soon as I'm done
10 asking questions. But just what I got to do. Okay?

11 So you were getting a good look at his face, right?

12 A No. His eyes I was looking at.

13 Q Well, the eyes are in the face, right?

14 A I was looking in the eyes only. I was not looking at facial
15 and none of that other stuff.

16 Q That's pretty specific tunnel vision, Mr. Woods, to only see
17 the eyes, right?

18 A If you was standing in front of a person by somebody that
19 would -- that coming to you to do -- come up to you and ask you,
20 Do you know any Shorty? Will you look at him around, look
21 around, look at him like this and try to scope him out? No. I didn't
22 try to scope him out.

23 Q Okay. But you got a good look at his eyes, right?

24 A Yeah.

25 Q Okay. So you didn't see any tattoos around his eyes,

1 then?

2 A No.

3 Q Okay. So if I show you --

4 A I didn't --

5 Q -- State's B --

6 A -- try to look at his face like that.

7 Q You didn't see any tattoos that looked like that on the

8 shooter's face, right?

9 A I didn't really look at him like that.

10 Q So that's a no, you didn't see any tattoos like that on the

11 shooter's face?

12 A No, I didn't really look at him like that.

13 Q Okay.

14 MR. HAUSER: One more brief indulgence, Judge.

15 THE COURT: Sure.

16 BY MR. HAUSER:

17 Q All right. Mr. Woods, you did see the gun that day, right?

18 A Yeah.

19 Q All right. What color was the gun?

20 A Silver.

21 Q Okay. So you saw the gun and the shooter's eyes, right?

22 A Uh-huh.

23 Q But nothing else?

24 A I really was trying to get out of the way, so.

25 Q I understand. So I'm just asking. Nothing else?

1 A Nothing else.

2 Q Okay. When the detective was questioning you, that was
3 Detective Marin, right?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes.

7 Q You said that the shooter looks a little like Detective
8 Marin?

9 A To who?

10 Q The questioning detective.

11 A Who would look like him?

12 Q Yeah.

13 A No.

14 THE COURT: He's asking you to repeat the question.

15 MR. HAUSER: Oh, I'm sorry.

16 THE WITNESS: Repeat, please.

17 BY MR. HAUSER:

18 Q You told the questioning detective that the shooter looked
19 like the questioning detective, right?

20 A No.

21 Q Don't remember that?

22 A No.

23 MR. HAUSER: One more brief indulgence, Judge.

24 You know what, Judge, I'm all set. Thank you.

25 THE COURT: Redirect?

1 MS. GOODMAN: Just briefly.

2 **REDIRECT EXAMINATION**

3 BY MS. GOODMAN:

4 Q Okay, DeAndre, you talked a lot about you initially thought
5 that that man was Hispanic?

6 A Yeah.

7 Q Okay. That's what you told the cops?

8 A Yeah.

9 Q Okay. Let's talk about the 911 call. Would that 911 call,
10 the information, that person that called, was that coming from you?

11 A The person was calling 911 was not me calling.

12 Q No, I know. But the information that she was getting, was
13 that from you?

14 A Yeah.

15 Q Okay. So that's your description as well, right?

16 A Yeah.

17 Q No surprise that it was --

18 A Yeah.

19 Q -- Hispanic, because that's what you thought at the time?

20 A At that time.

21 Q Let's talk about the travel -- the direction of travel. Okay.
22 So I scanned the voluntary statement. Okay. I scanned the
23 voluntary statement just to ensure that I wasn't missing anything.
24 And I don't think I was. Okay.

25 You told -- Mr. Hauser asked you a bunch of questions on

1 when you were describing that the car was facing the truck, the --
2 okay --

3 A It was the opposite.

4 Q Do you recall that section of the -- Mr. Hauser's
5 questioning, DeAndre?

6 A Like, it -- the car was facing towards Charleston, like,
7 going towards Charleston.

8 Q Okay. So I'm going to --

9 MS. GOODMAN: And, Your Honor, permission to
10 approach?

11 THE COURT: Yeah.

12 BY MS. GOODMAN:

13 Q Okay. I'm going to just show you, and you don't have to
14 read it out loud, but just look at this statement here about this
15 whole --

16 A [Witness complies.] Yeah.

17 Q Okay. And then just keep reading.

18 A [Witness complies.]

19 Q Okay. You good?

20 A Uh-huh.

21 Q Okay. DeAndre, you just read a little part of the voluntary
22 statement that was talking about the car thief and the truck and it
23 was going east. Okay. So what you were talking about in that
24 statement, was it the direction of the car travel or how it was
25 parked?

1 A Like, the car was parked, like, the truck was like this, and
2 the car was like this, parked like that.

3 Q Okay. So it looks as though --

4 A The parking was like this --

5 MS. GOODMAN: Your Honor, this -- oh, just one second.
6 It looks as though the witness is indicating his one hand --
7 THE WITNESS: In a car, and then a truck.

8 MS. GOODMAN: -- perpendicular with the Toyota --

9 THE WITNESS: The way that my sitting -- where I was
10 sitting at, how I saw it, the way it was set up, like, you see where
11 your little white thing that --

12 THE COURT: Where what?

13 THE WITNESS: That white thing, the white dot on
14 computer.

15 THE COURT: On mine?

16 MS. GOODMAN: And your --

17 THE WITNESS: On your desk.

18 BY MS. GOODMAN:

19 Q And, DeAndre, are we talking about this crystal thing?

20 A Yeah, the crystal.

21 Q Okay.

22 A That's how the car was parked, like this.

23 THE COURT: Why don't --

24 MS. GOODMAN: Oh, and --

25 THE COURT: Okay. Why don't we just have him --

1 THE WITNESS: And the truck was like this.
2 THE COURT: -- draw it, so we can --
3 MS. GOODMAN: Okay.
4 THE COURT: Can you draw it? Would that be easier?
5 THE WITNESS: Yeah.
6 THE COURT: All right. So --
7 MS. GOODMAN: I have a yellow piece of paper.
8 THE COURT: All right. So let's just have you draw it,
9 because --
10 THE WITNESS: Doing it --
11 THE COURT: -- it'll be a little bit easier. Okay?
12 THE WITNESS: Yeah. It's complicated saying it like that.
13 THE COURT: Okay.
14 MS. GOODMAN: All right.
15 THE COURT: So why don't you draw it and help us
16 explain it.
17 THE WITNESS: Okay. This is the truck.
18 MS. GOODMAN: I'm going to -- okay.
19 THE WITNESS: This is the truck right here. The car was
20 parked right there.
21 MS. GOODMAN: Okay. I'm going to just publish this.
22 Okay? Thank you. And, Your Honor, I'm just going to --
23 THE WITNESS: And that's the front end of the car.
24 MS. GOODMAN: I'm going to show Defense counsel.
25 And the publish for the jury [indiscernible]. Okay.

1 BY MS. GOODMAN:

2 Q So I'm pointing at this, where you've described as the
3 truck, the white truck that was in the driveway?

4 A Yeah. And the mailbox. I forgot to put the mailbox up
5 there.

6 Q That's all right. And then this is the -- this is that Toyota?

7 A Yeah.

8 Q So that whole line of questioning that you were going
9 through with the detectives was talking about how the car was
10 parked?

11 A Yeah.

12 Q Is that correct? It's not the direction of where the car
13 went?

14 A Yeah.

15 Q Okay. Now, when you told the detectives when they --
16 they asked you what direction the car went, where did -- what did
17 you say?

18 A Towards Charleston.

19 Q All right. Towards Charleston. So you said that it was
20 going this way towards Charleston, correct?

21 A Yeah. And --

22 Q Okay. Did you ever recall telling the detectives at all in
23 this voluntary statement that it turned one direction or the other?

24 A I didn't know which way it went. Like, I don't know these
25 areas like that. So I told them towards Christie Lane.

1 Q Okay. So towards Christie, which is this direction here.

2 A Yeah.

3 MS. GOODMAN: And I'm pointing for the record on my
4 hand -- my pen towards Christie.

5 THE COURT: So west.

6 MS. GOODMAN: West.

7 BY MS. GOODMAN:

8 Q Okay. DeAndre, so let's talk a little bit more about --

9 A But they passed Christie Lane, I don't know what they did.

10 Q Okay.

11 A They just turned on Charleston towards that way.

12 Q That's okay. When you first gave the statement to the
13 detectives, that statement there, do you -- you don't recall saying
14 anything about that the shooter looked like the detective; is that
15 correct?

16 A No.

17 Q Is it because it's not in the voluntary statement?

18 A No.

19 Q Okay. DeAndre, we're clear that you didn't see tattoos at
20 the time?

21 A No, I didn't see no tattoos at that time.

22 Q Okay.

23 A I was trying to get up and get out of the --

24 Q When you see this guy right here, defendant in this case,
25 is that guy, you're sure, the shooter in this case?

1 A Yeah, that's the dude.

2 Q Okay. And you say that, okay, he's 95 percent sure on the
3 photo lineup. Would there have been something -- showing you
4 that picture again, State's Exhibit 203 -- would be -- would there be
5 something that would make you 100 percent sure?

6 A If his hair was shaved a little bit off.

7 Q Okay.

8 A Lighter, you know.

9 Q So you see in that -- I'm sorry. You see in that picture that
10 there's tattoos in that picture, correct?

11 A Yeah.

12 Q But you still identified him?

13 A Yeah.

14 Q Okay. So tattoos, no tattoos, you know that's the guy?

15 A Yeah.

16 Q Okay. Hispanic or not Hispanic, you know that's the guy?

17 A Yeah.

18 Q Okay.

19 MS. GOODMAN: No further questions, Your Honor.

20 THE COURT: Recross.

21 MR. HAUSER: Yes, Your Honor. Briefly.

22 **RECROSS-EXAMINATION**

23 BY MR. HAUSER:

24 Q Mr. Woods, I'm going to show you again State's 203,
25 okay? All right. Number 5 there?

1 A Yeah.

2 Q Is the one you identified.

3 A Uh-huh.

4 Q That's the person you've identified in this shooting, right?

5 A Yeah.

6 Q The person you identified as Mexican, right?

7 A Yep.

8 Q The person you identified as having no tattoos, right?

9 A Yep.

10 Q The person you identified as being 19 or 20 years old?

11 A No.

12 Q You never said they were 19 or 20 years old?

13 A He was -- that's the second person.

14 Q Which second person?

15 A He came up to me the day before.

16 Q Okay. So he didn't come up to you the day before?

17 A He did too.

18 Q Okay. So the second person's 19 to 20?

19 A Yeah.

20 Q All right. The first person didn't give an age?

21 A The first person, he -- that's the one that came up to me.

22 He was the one that came right behind him. He was in back of him,

23 asking -- he was doing this, trying to say, Do you want me to kill

24 him?

25 Q Okay. So you were able to ascertain that he was in --

1 excuse me.

2 You were able to guess that he was about 19 or 20 years
3 old --

4 A No.

5 Q -- in spite -- hold on. Let me finish the question.

6 You told the police that this guy was between 19 and 20
7 years old, right? You're saying it's the second guy, right?

8 A The second guy was not 19 and 20 years old. The -- he
9 was a little older and the first one was 19 and 20 years old.

10 Q Okay. Which one is Ted? You're saying he's one of these
11 guys. Was he 19 or 20, or was he older?

12 A He looks older.

13 Q Okay. So you identified one of the gentlemen there as 19
14 or 20 years old.

15 A Yeah.

16 Q And you were able to do that, despite not looking at him?

17 A Not really looking at him like that.

18 Q Okay. Because you're not giving us much of a range there
19 with only a year, right?

20 A I told you that the second one looked like he was older.

21 Q Okay.

22 A And I really was not looking at him like that. I was looking
23 in his eyes only.

24 Q Okay.

25 A Like I'm looking at yours.

1 Q Okay. Now, can you tell the age of a person by looking in
2 their eyes?

3 A Not really.

4 Q Okay.

5 A You can't tell. But you would tell how his actions was.

6 Q Okay.

7 MR. HAUSER: Brief indulgence, Judge.

8 THE COURT: Yep.

9 MR. HAUSER: Nothing further at this time.

10 THE COURT: Recross -- or redirect?

11 MS. GOODMAN: I'm sorry, Your Honor. And it's just for
12 clarification purposes.

13 **FURTHER REDIRECT EXAMINATION**

14 BY MS. GOODMAN:

15 Q Two people, correct?

16 A Yep.

17 Q Okay. First person --

18 A 19 and 20.

19 Q Okay. Not --

20 A Not that guy.

21 Q Not that guy.

22 MS. GOODMAN: And when I say it, Your Honor, that
23 guy --

24 THE WITNESS: Not the --

25 MS. GOODMAN: -- was the defendant.

1 THE WITNESS: -- defendant right there, that's standing
2 now with the blue tie.

3 BY MS. GOODMAN:

4 Q Okay. So we're talking about September 30th. Two
5 males, including the defendant, came up to you. You described the
6 first one differently than the second one, who is the defendant,
7 correct?

8 A Yep.

9 Q Okay. The first one you described as 19 to 20?

10 A Yeah.

11 Q So younger?

12 A Yeah.

13 Q And you described him as shorter?

14 A Yeah, shorter and skinnier.

15 Q And skinnier. The second one, who you identified as the
16 defendant --

17 A It was stocky --

18 Q -- you described --

19 A -- more stockier and taller.

20 Q Okay. So I just wanted to clarify the two people that we
21 were talking about. Okay?

22 A You got different people.

23 MS. GOODMAN: Thank you, Your Honor.

24 THE WITNESS: Two different people.

25 THE COURT: Anything based on that?

1 MR. HAUSER: No follow-up, Judge. Thank you.

2 THE COURT: Ladies and gentlemen, any questions from
3 the jury?

4 [Bench conference transcribed as follows.]

5 THE COURT: So you guys have got to tell him to
6 [indiscernible] the jury.

7 MR. HAUSER: Two?

8 THE COURT: Yeah. Because he's going -- it's okay. He's
9 going [indiscernible] like if a good point comes up, he looks over at
10 them, and he's, like, if a bad thing happen, he shaves their head --
11 he shaved his head.

12 MR. HAUSER: Pass them all.

13 THE COURT: Just let him know, like, he can't look -- no
14 communicating like that.

15 MR. HAUSER: Right.

16 MR. SHAYGAN-FATEMI: I like that.

17 MR. HAUSER: Uh-huh.

18 MR. SHAYGAN-FATEMI: Yep. That's fine.

19 I'm sorry, could I see that last one?

20 THE COURT: Yep.

21 MS. GOODMAN: I don't know if --

22 MR. LEXIS: Judge, after this, I'm going to recall
23 Mr. Ramos.

24 THE COURT: Okay. Is that it for today?

25 MR. LEXIS: Yes.

1 THE COURT: Okay.

2 MR. SHAYGAN-FATEMI: Okay.

3 THE COURT: Good on all?

4 MR. SHAYGAN-FATEMI: Yeah.

5 THE COURT: Okay.

6 [End of bench conference.]

7 THE COURT: All right. Mr. Woods, we have a few

8 questions for you. All right.

9 Did the man with the red shirt have a long-sleeve shirt on

10 under the red shirt or were his arms bare?

11 THE WITNESS: His arms was bare.

12 THE COURT: His arms were bare was the answer.

13 Was the white truck pointing towards Christie Lane while

14 parked in the driveway?

15 THE WITNESS: It was towards Linn Lane.

16 THE COURT: Towards what?

17 THE WITNESS: The truck was towards -- turning, like, in

18 the middle, like --

19 THE COURT: So towards the street?

20 THE WITNESS: Uh-huh.

21 THE COURT: Is that a yes?

22 THE WITNESS: Yes.

23 THE COURT: And did the car turn in that same direction

24 when it made it to Charleston?

25 THE WITNESS: It --

1 THE COURT: So did the car turn towards the Christie Lane
2 direction?

3 THE WITNESS: Yeah.

4 THE COURT: Is that a yes?

5 THE WITNESS: Yes.

6 THE COURT: Yes. And then on September 30th, did the
7 white man wear long sleeves or short sleeves to see the tattoos on
8 the arms?

9 THE WITNESS: Short sleeve, and I didn't really look at his
10 arms like that.

11 THE COURT: Short sleeves and he didn't really look at his
12 arms like that, was the answer.

13 State, follow-up?

14 MS. GOODMAN: No, Your Honor.

15 THE COURT: Defense, follow-up?

16 MR. HAUSER: Yes, Your Honor.

17 **FURTHER EXAMINATION**

18 BY MR. HAUSER:

19 Q Mr. Woods, just to be clear, the question was about the
20 white man on September 30th. At no time in this case did you ever
21 describe the shooter as white?

22 A No.

23 MR. HAUSER: I have nothing further.

24 THE WITNESS: Do --

25 THE COURT: So no. The answer was no, he never did

1 that.

2 MR. HAUSER: No, he never did that. That was my
3 understanding.

4 THE COURT: Right?

5 THE WITNESS: Like, okay, I did --

6 THE COURT: No, I'm sorry. I just have to --

7 THE WITNESS: Till now --

8 MR. HAUSER: I can clarify it if you want.

9 THE COURT: Okay.

10 THE WITNESS: You can, you'll clarify?

11 BY MR. HAUSER:

12 Q Let me clear that one up, Mr. Woods.

13 You never told the police the shooter was white in this
14 case at any time?

15 A To -- I just found out.

16 Q Okay. So the --

17 A Just now, during the --

18 Q That's a no to my question.

19 A No.

20 Q At no point, at any time, did you tell the police the shooter
21 was white?

22 A Like, no.

23 Q No. Okay. Thank you very much.

24 THE COURT: Any follow-up, jurors? All right.

25 Mr. Woods, thank you so much for your testimony. You

1 are excused from your subpoena. Please do not share any of your
2 testimony with anyone else involved in the case. Okay, sir?

3 THE WITNESS: I won't.

4 THE COURT: All right. Thank you.

5 And then my marshal has your stuff. So he'll get those to
6 you when you exit.

7 THE WITNESS: Bye.

8 THE COURT: Thank you.

9 State?

10 MR. LEXIS: The State recalls Bernardo Ramos.

11 **GENARO RAMOS,**

12 [having been recalled as a witness and first duly sworn, testified as
13 follows:]

14 THE CLERK: Thank you. You may be seated. Please state
15 your complete name, spelling both your first and last name for the
16 record.

17 THE WITNESS: G-E-N-A-R-O, and then R-A-M-O-S.

18 THE CLERK: And your name?

19 THE WITNESS: Genaro Ramos.

20 THE CLERK: Thank you.

21 **DIRECT EXAMINATION**

22 BY MR. LEXIS:

23 Q Mr. Ramos, did you just testify a little bit ago?

24 A Yes.

25 Q Okay. When you walked out the door, did I follow you

1 and basically tell you you were released from your subpoena and
2 you could go?

3 A You released me and then you say I can go, yeah.

4 Q Did you then indicate to me that you were nervous?

5 A Yes.

6 Q Why did you indicate that to me?

7 A Because this is my first time.

8 Q Okay. Particularly, why were you nervous and what made
9 you tell me what you told me?

10 A The guy that I saw is the guy that I was going to point
11 him, that that was the guy that I saw coming out of the car.

12 MR. SHAYGAN-FATEMI: Your Honor, we're going to
13 object to that. May we approach?

14 THE COURT: Sure.

15 [Bench conference transcribed as follows.]

16 MR. SHAYGAN-FATEMI: It's highly improper. The guy
17 takes the stand, is staring at the defendant for minutes on the stand.
18 He doesn't identify him. He gets off the stand. Chad goes back
19 outside, talks to him, and then comes back in side. Now there's a
20 magical identification. We're going to ask the Court to strike the ID.
21 We think it's highly improper that he gets recalled after staring at
22 the defendant this entire time and then come and say, Oh, now I
23 identify him.

24 MR. LEXIS: The nature of this case is a [indiscernible]
25 case. We are well aware of the facts, Your Honor. You're well

1 aware of the previous testimony from other witnesses on what the
2 nature of this is. There's nothing objectionable about it, it's highly
3 relevant. If they want to cross him on -- if they think I did anything
4 improper, go ahead. I did exactly what happened. I went outside, I
5 released him, I said, You're good to go. He told me he was
6 extremely nervous and he wanted to identify the man in court that
7 he -- he got scared.

8 THE COURT: So, I mean, it's -- the issue here, as I
9 understand why you objected. But legally, there's no reason why
10 this can't come in now. Is it definite --

11 MR. SHAYGAN-FATEMI: Well, let's --

12 THE COURT: -- their cross-examination.

13 MR. SHAYGAN-FATEMI: Let's start with there's zero
14 discovery given to the defense that says that he has identified him
15 anywhere. So we have never even been given any information that
16 this man is able to identify our client. He comes in here, he takes
17 the stand the first time. He's still unable to identify him. He -- I
18 mean, he doesn't even ask him, Oh, is this the guy?

19 And he gets off the stand, he's released, they go outside,
20 and then he comes back inside and now I can identify him. I think
21 it's highly improper.

22 THE COURT: I understand what you're saying, but that's
23 not a legal objection. And the point is, is that's all great for
24 cross-examination. I mean, right? It's, like, you've never pointed
25 him out before he sat here for however long, looked at him, and

1 now magically you can appear and say it's him. I mean, that's all
2 good for cross-examination.

3 But in regards to whether or not it's inadmissible, it's jut
4 not.

5 MR. SHAYGAN-FATEMI: A moment of indulgence.

6 THE COURT: Sure.

7 MR. SHAYGAN-FATEMI: I think we're going to move for a
8 mistrial and we can make a record about it and Your Honor can
9 make a ruling.

10 THE COURT: Okay. Why?

11 MR. SHAYGAN-FATEMI: We think it's, you know,
12 basically, it's going to repetitive as to what I said. But --

13 THE COURT: Okay. So for those same basic --

14 MR. SHAYGAN-FATEMI: For the same basic reasons,
15 we're going to move for a mistrial.

16 THE COURT: Okay. State?

17 MR. LEXIS: Again, Judge, it's fair cross-examination. I'm
18 telling the Court exactly what happened as far as what occurred in
19 this case is I went out to release him from his subpoena. I said,
20 You're good to go. He then told me he was extremely nervous. I
21 said Why? He says, Because I saw the guy in court, that was the
22 guy.

23 THE COURT: Okay. So I understand the objection, I
24 understand the Motion for a Mistrial. The Motion for Mistrial is
25 denied. I think everything is complete fair game for

1 cross-examination. But I don't see -- I don't think that the -- I don't
2 think that Defense is saying and I don't think that the State did
3 anything improper. I think what the defense is saying is, like, look,
4 this guy went outside and now he's looked at the guy forever
5 during court, and then he walks back in and can ID him.

6 That being said, I don't see where a mistrial is appropriate
7 or whether this is inadmissible. So I'll allow the cross-examination
8 to go the full gamut. But at this point in time, I'm letting the
9 testimony proceed.

10 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

11 THE COURT: Thank you.

12 [End of bench conference.]

13 BY MR. LEXIS:

14 Q Sir, you pointed to a man earlier that we stated was the
15 man that you saw on the day in question. Can you point to him
16 again and identify for me a article of clothing he's wearing?

17 A [Witness points.]

18 Q Okay. What -- give me an article of clothing he's wearing,
19 sir.

20 A Red shirt.

21 Q Not on the day of.

22 A Oh, okay.

23 Q Right now, what is he wearing?

24 A Tie and a blue shirt.

25 MR. LEXIS: Your Honor, let the record reflect the witness

1 has identified the defendant.

2 THE COURT: It shall.

3 BY MR. LEXIS:

4 Q Sir, just to clarify some things, the police never showed
5 you a picture of the defendant?

6 A The police? No, they never did.

7 Q Okay. The prosecutors, myself, Ms. Rose, never showed
8 you a picture of the defendant, correct?

9 A No.

10 Q Nobody showed you a picture of the defendant?

11 A No, nobody.

12 Q Have you ever met the defendant before?

13 A No.

14 Q Okay. And the person you're -- again, you're talking about
15 as the defendant is the person you saw in that red shirt --

16 A Yes.

17 Q -- with your earlier testimony, park that Toyota Corolla
18 and then walk up the street?

19 A Yeah.

20 MR. LEXIS: Nothing further, Your Honor.

21 THE COURT: Mr. Hauser?

22 MR. HAUSER: Yes, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MR. HAUSER:

25 Q Afternoon again, sir.

1 A Good afternoon.

2 Q Did you speak to the district attorney before you testified
3 today?

4 A No.

5 THE COURT: Sorry, which time?

6 MR. HAUSER: The first time.

7 THE WITNESS: No.

8 BY MR. HAUSER:

9 Q You didn't speak to anybody? How did you know what
10 courtroom we were in?

11 A I was just coming as a witness. I did -- I only speak about
12 that.

13 Q Okay. So you knew where to go, but you didn't talk to
14 anybody beforehand?

15 A No.

16 Q Okay.

17 THE COURT: Okay. I apologize, Mr. Hauser. I need to
18 interrupt.

19 MR. HAUSER: No, I'm all right.

20 THE COURT: Are we talking about did he speak to
21 anybody today or just ever or can I just get a timeframe, so I
22 understand what's going on?

23 MR. HAUSER: That's exactly where we're going, Judge.

24 THE COURT: Okay.

25 BY MR. HAUSER:

1 Q So you didn't speak to anybody today before you testified,
2 right?
3 A Uh-huh.
4 Q Is that a yes?
5 A I didn't want to be here, honestly, you know.
6 Q Okay.
7 A So I was just here brought by -- as a witness.
8 Q Okay. So someone, obviously, came to your house with a
9 subpoena, right?
10 A No.
11 Q No?
12 A Not to my house.
13 Q To your work?
14 A No.
15 Q How did you even know about court today?
16 A Because I got a citation.
17 Q You got a citation?
18 A Uh-huh.
19 Q What kind of citation?
20 A When the officer, when I spoke that day when the
21 incident --
22 Q Okay.
23 A Uh-huh.
24 Q So you found out about today's court date the very first
25 day that you spoke to the officers?

1 A No.

2 Q Okay. When did you find out you were supposed to be

3 here today?

4 A Today.

5 Q Okay. How did you find out?

6 A They send me a -- the courtroom and everything, citation.

7 Q Right. Right.

8 A Uh-huh.

9 Q How did you even know to come to this building today?

10 A Because the officer.

11 Q Okay. What officer, do you know?

12 A No.

13 Q When did you speak to that officer?

14 A Last night.

15 Q Last night? So an officer came to your house last night?

16 A No. Nobody came to my house.

17 Q Okay. Where did you speak to that officer?

18 A My phone.

19 Q By phone?

20 A Uh-huh.

21 Q Okay. Is that a yes?

22 A Yes.

23 Q Sorry. Again, it's natural, everybody does it.

24 When you spoke to that officer, did you say you

25 remembered the person?

1 A No, I never say that.

2 Q Okay. So you didn't give any indication --

3 A No.

4 Q -- you knew who this person was?

5 A Uh-uh.

6 Q Is that a no?

7 A No.

8 MR. HAUSER: Brief indulgence, Your Honor.

9 THE COURT: Sure.

10 BY MR. HAUSER:

11 Q Sir, you wouldn't mistake myself for Mr. Donko, would

12 you?

13 A No.

14 Q You wouldn't mistake Mr. Shaygan for Mr. Donko?

15 A Can I have a break?

16 THE COURT: We're -- I think we're almost done.

17 MR. HAUSER: We're almost done.

18 THE WITNESS: Okay.

19 MR. HAUSER: I don't have very many more questions.

20 BY MR. HAUSER:

21 Q You would never confuse the gentleman sitting here --

22 A Uh-huh.

23 Q -- for the gentleman sitting here, right?

24 A No, I would never.

25 Q He looks different than the two of us, right?

1 A Yes. Yes, yes.

2 Q So if you're looking at this table, looking for the guy who
3 looks most like that guy, you're obviously going to pick the guy --

4 A Point to him.

5 Q -- all the way over here?

6 A Yeah.

7 Q Right. Did you approach Mr. Lexis or did he approach
8 you?

9 THE COURT: After?

10 BY MR. HAUSER:

11 Q After you testified the first time, excuse me.

12 A No, I approached to him.

13 Q Okay.

14 MR. HAUSER: I have nothing further, Judge.

15 THE COURT: Okay. Mr. Lexis?

16 MR. LEXIS: Nothing further, Judge.

17 THE COURT: Ladies and gentlemen, anything from you?
18 Parties approach.

19 [Bench conference transcribed as follows.]

20 MR. HAUSER: Technically outside the scope. But if it had
21 been the first time, I wouldn't say that.

22 THE COURT: So are you objecting?

23 MR. HAUSER: Yeah, object to outside the scope. But
24 that's -- you know, if they wanted to know that, they could have
25 covered it the first time. But that's all.

1 MR. SHAYGAN-FATEMI: [Indiscernible.]
2 MR. HAUSER: I don't know that I have a legal ground to
3 stand on there, but I wanted to object.
4 THE COURT: All right. Well, I'm going to put that you
5 objected, but the objection is overruled.
6 MR. HAUSER: There we go.
7 THE COURT: And I'm going to ask it.
8 MR. HAUSER: Thank you, Judge.
9 [End of bench conference.]
10 THE COURT: All right. Sir, question for you. When the
11 car was speeding, did it drive past your house?
12 THE WITNESS: Yeah, he was passing my mom's house.
13 THE COURT: Past your mother's house.
14 THE WITNESS: Yeah.
15 THE COURT: Okay. Any follow-up to that?
16 **FURTHER EXAMINATION**
17 BY MR. LEXIS:
18 Q State's 7, again, sir, your mom's house, 5675 Big Sea?
19 A No.
20 THE COURT: No.
21 BY MR. LEXIS:
22 Q Or, sorry. I'm sorry.
23 A 5617 White Cap.
24 MS. GOODMAN: Can't see it, Chad.
25 THE COURT: Mr. Lexis, your head is in the way.

1 MR. LEXIS: I'm sorry.

2 THE COURT: It's okay.

3 MR. LEXIS: I'm sorry.

4 BY MR. LEXIS:

5 Q Tell me again your mom's address.

6 A 5617 White Cap Street.

7 Q All right. So --

8 A Right here.

9 Q That blue dot here, sir?

10 A Yeah.

11 Q Correct?

12 A Yes.

13 Q Okay. And tell me again with an arrow, go ahead and
14 click on that red marker thing at the bottom, so you could draw, and
15 point an arrow in the direction of where that car was driving?

16 A It was driving here, this corner, and then, like I say, he was
17 drop off here.

18 Q Okay. So right past your mom's house --

19 A Yeah.

20 Q -- then stopped over there where the Toyota Corolla --

21 A Across to --

22 Q -- in any case [indiscernible] and north up the street?

23 A Yes.

24 MR. LEXIS: Nothing further.

25 THE COURT: Follow-up cross?

1 MR. HAUSER: No, thank you, Judge.
2 THE COURT: Any other questions from the jurors?
3 All right. Sir, thank you so much again for your
4 testimony. You are excused.
5 THE WITNESS: Thank you.
6 MR. LEXIS: Judge, might we approach?
7 THE COURT: Yep.
8 [Bench conference transcribed as follows.]
9 MR. LEXIS: Judge, that's it for today. We have potentially
10 another witness and potentially another cop tomorrow. But we're
11 going to be done by the morning.
12 THE COURT: Okay.
13 MR. HAUSER: Sounds good.
14 THE COURT: All right. So --
15 MR. HAUSER: I'm not --
16 THE COURT: -- I have a [indiscernible] habeas corpus
17 hearing at Room 9. They tell me it's only going to be an hour. But
18 I'm going to give them a buffer, because I don't feel like anyone
19 ever is right on the time.
20 MR. HAUSER: Right.
21 THE COURT: So we'll start up at 10:30.
22 MR. HAUSER: Okay, cool.
23 THE COURT: Okay?
24 MR. HAUSER: Sounds good.
25 MR. LEXIS: And when did you want to go over jury

1 instructions, Judge?

2 THE COURT: Do you guys think we'll close tomorrow?

3 MR. LEXIS: Oh, yeah.

4 MR. HAUSER: I don't see any reason we would -- I don't
5 think we're calling anybody. I mean God forbid I have to put a
6 witness up there at this point.

7 THE COURT: God forbid what?

8 MR. HAUSER: A witness that might testify is him, and I
9 would like that to not happen.

10 MR. SHAYGAN-FATEMI: And it [indiscernible].

11 MR. HAUSER: We'd still --

12 MR. LEXIS: My rebuttal witness would be the -- a cop and
13 the stolen vehicle [indiscernible].

14 THE COURT: So how long will it take on -- I haven't read
15 through the instructions yet. Are -- is there going to be a lot of
16 contention?

17 MR. SHAYGAN-FATEMI: I would imagine not. We just
18 had a very basic proposed. Probably a few we'll anticipate them
19 objecting to. And I think Your Honor makes a couple of quick
20 rulings on them [indiscernible].

21 THE COURT: So why don't we come in at 10:30 and
22 [indiscernible]?

23 MR. HAUSER: That's fine.

24 THE COURT: And then -- hold on. So I think -- okay.
25 Here. We can do it [indiscernible]. I hate when [indiscernible] if

1 you only have a little bit to do, because then it's so awkward to
2 break it late. Because if you only have two witnesses, then --

3 MR. HAUSER: Break at noon.

4 THE COURT: -- like, 11:45, right, then there has to be a
5 witness for 45 minutes. So I'm thinking we've been running
6 at 12:30, we have them eat lunch already, and then go --

7 MR. HAUSER: And just plow through it in the afternoon?

8 THE COURT: What do you guys think about that?

9 MR. HAUSER: And us meet early and do the instructions?

10 THE COURT: Yeah.

11 MR. HAUSER: Think that's bad?

12 MR. SHAYGAN-FATEMI: I don't care.

13 MR. HAUSER: And we can just get right through it.

14 THE COURT: Yeah.

15 MR. SHAYGAN-FATEMI: And we just heard all that --

16 MR. HAUSER: 12:30.

17 THE COURT: No, 12:30. Yeah.

18 MR. SHAYGAN-FATEMI: 12:30.

19 THE COURT: And you guys be here at 10:30 for jury
20 instructions.

21 MR. SHAYGAN-FATEMI: Okay.

22 MR. HAUSER: Yeah.

23 THE COURT: All right. Sounds good.

24 MR. HAUSER: Sounds good.

25 THE COURT: Thanks, guys.

1 MR. HAUSER: Thanks, Judge.

2 [End of bench conference.]

3 THE COURT: All right, you guys, it looks like we
4 potentially are going to finish this case tomorrow. So I'm going to
5 do some morning calendar, and then the parties, we're going to set
6 up some jury instructions. And then we'll continue the case. So
7 you guys don't need to be here tomorrow until 12:30. If you could,
8 please come already have eaten lunch, so that -- obviously, we'll
9 take an afternoon break, but it won't be one of those longer ones,
10 so we can power through. Okay?

11 During the recess you're admonished not to talk or
12 converse among yourselves or with anyone else on any subject
13 connected to this trial or read, watch, or listen to any report of or
14 commentary on the trial of any person connected with this trial by
15 any medium of information, including, without limitation to
16 newspapers, television, the Internet, and radio, or form or express
17 any opinion on any subject connected with the trial until the case is
18 finally submitted to you.

19 I hope you have a good night, I'll see you back at 12:30.

20 [Jury recessed at 4:50 p.m.]

21 THE COURT: Officer, is there a door still open? Is there
22 someone there or am I just --

23 MR. HAUSER: Just the marshal.

24 THE COURT: It's just the marshal? Okay. All right. Great.

25 MR. HAUSER: He's coming in.

1 THE COURT: All right. So we are outside the presence of
2 the jury.

3 MR. SHAYGAN-FATEMI: Your Honor, I'd just like to make
4 a brief record.

5 THE COURT: Okay.

6 MR. SHAYGAN-FATEMI: I think what happened was very
7 unusual. Your Honor has done more trials than anybody. When
8 you put a witness on the stand, it's one thing if some other
9 evidence comes out and then the State wants to recall that witness
10 to correct the -- what was presented after they got off the stand.
11 And there might not be an NRS or something on point, but the fact
12 that the issue of him being recalled was strictly for an identification.
13 Absolutely nothing else.

14 He takes the stand, you have two beyond competent
15 prosecutors. They certainly could have asked him, Can you make
16 an identification of the person? Obviously, he couldn't, which is
17 why they didn't ask him that. Obviously, they couldn't. So -- he
18 couldn't.

19 So the fact that they then recall him, after the guy's been
20 sitting there, looking at Ted, maybe he doesn't like Ted. Maybe
21 Ted -- I don't know. And he then decides to come back in here and
22 for the sole purpose and say, you know what, I was nervous and
23 didn't want to say anything.

24 They have an opportunity to pretrial their witnesses. You
25 know, I just thought it was absolutely ridiculous that that happened.

1 And I appreciate Your Honor allowing me to carry a tone. But I
2 think the fact that he made that identification was just absolutely
3 absurd, after he came on the stand and they didn't ask him about it
4 the first time.

5 We didn't present any information that rebutted anything
6 that he said. Now they're calling him as a rebuttal witness. Or even
7 any of their own witnesses said anything that then they just want to
8 kind of clarify it. I thought it was absolutely ridiculous. I think that
9 the jury was confused as to why he was back. And I think that it
10 made the whole process unfair for Ted.

11 I -- just for the record, we did ask for a mistrial at the
12 bench. And Your Honor denied our request for a mistrial. We
13 asked for his identification to be stricken, and Your Honor did not
14 strike it. And so I just wanted to make a record about that and I
15 appreciate it.

16 THE COURT: Okay. State?

17 MR. LEXIS: Your Honor, State did nothing improper. I
18 asked him myself if, after Defense counsel got up there and asked
19 for a mistrial, and addressed their concerns, that the State never
20 told him, Hey, come in here and identify the victim -- or, excuse me,
21 the defendant.

22 I never showed him a picture of the defendant. The cops
23 never showed him a picture of the defendant. Simply walked him
24 out, as he stated, told him you're good to go, and that's when he
25 told me he wished he would have said that that was the man. He

1 was nervous, but he recognized that person in this court as being
2 the guy with the red shirt. So I asked to recall him.

3 THE COURT: Okay. So, look, I understand both sides.
4 Right? I don't know what are prosecutors supposed to do if a
5 witness walks out and then turns around and says, hey, I was
6 nervous, I wanted to ID the guy, but I was too scared to do so.

7 On the other side, I see the defense's position, because
8 they feel like, well, he never ID'd him. Then he had the ability to sit
9 here for 30 minutes or however long it was, get the opportunity to
10 be alone, and now he wants to identify him.

11 But that's really kind of the beauty and mess of a trial,
12 right? It's completely fluid and it's almost like organized chaos.
13 You never know what's going to happen. And so here, I definitely
14 don't think that the State did anything wrong. I don't think that they
15 followed him out and, you know, tried to get him to change his
16 story. It's clear, I think everybody would probably agree, he's very
17 nervous up there. In fact, once Mr. Hauser started asking him
18 questions, he kind of looked to me and said, I really -- I need a
19 break, or whatever it was that he said.

20 So I understand why the defense is frustrated. But I don't
21 think that there was anything wrong with what happened. I think
22 exactly what happened, happened. He walked out, he told the
23 prosecutor, Hey, I was scared, but I wanted to identify him. And so
24 he came back in and he did that. I think that that was fair game for
25 cross-examination, and I think the arguments that you are making

1 are great arguments to be hand on cross-examination and then in
2 front of a jury. But I don't think that they're objectionable and make
3 the identification inadmissible, nor do I think it's cause for a
4 mistrial.

5 So I appreciate the objections that have been made. I did
6 overrule the Motion to Strike and I also overruled the Motion -- or
7 denied the Motion for a Mistrial.

8 So we will -- let's see, we'll come back tomorrow to do
9 jury instructions at 10:30, and then we'll resume trial at 12:30.

10 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

11 MR. HAUSER: Thank you, Judge.

12 THE COURT: Thank you.

13 You guys, in regards to this, I will make it a court's exhibit,
14 unless you guys would like me to make it State's next. Either way,
15 it goes back to the jury as a demonstrative aid. Parties' pleasure.

16 MR. SHAYGAN-FATEMI: Guess I don't really care.

17 MR. HAUSER: We'll go another way.

18 THE COURT: Just do State's next.

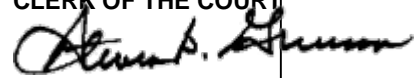
19 MR. HAUSER: Whatever the label is. Yeah.

20 [Court recessed at 4:49 p.m.]

21 ///

22
23 ATTEST: I do hereby certify that I have truly and correctly
24 transcribed the audio/video proceedings in the above-entitled case
25 to the best of my ability.


Shawna Ortega, CET*562



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff(s),)	
)	Case No. C-19-345584-1
vs.)	
)	Department VI
TED MICHAEL DONKO,)	
)	
Defendant(s).)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH,
DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 13, 2020

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – PART I – DAY 4 OF 4**

APPEARANCES:

For the Plaintiff(s):	CHAD N. LEXIS, ESQ. LAURA ROSE GOODMAN, ESQ. (Deputy District Attorneys)
-----------------------	--

For the Defendant(s):	ROBSON M. HAUSER, ESQ. KAMBIZ SHAYGAN-FATEMI, ESQ. (Deputy Public Defenders)
-----------------------	--

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

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1 **LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 13, 2020**

2 [Proceeding commenced at 11:15 a.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: All right. We're on the record in State of
6 Nevada versus Ted Michael Donko, C-345584-1. He's present in
7 custody with both attorneys, Mr. Shaygan and Mr. Hauser, both
8 deputy district attorneys, Ms. Rose Goodman, as well as Mr. Lexis
9 are all present.

10 All right. So we have -- we are going to put the objections
11 to the jury instructions on the record.

12 Mr. Shaygan, the first proper instruction you had, I will
13 put as Defense Number 1. And then on Defense Proposed 1, you
14 put:

15 A defendant in a criminal case action is presumed to be
16 innocent.

17 And instead of the word, Until the contrary is proved,
18 Defense wanted the word, Unless; is that correct?

19 MR. SHAYGAN-FATEMI: That's correct, Your Honor.

20 THE COURT: And then can you put why you thought that
21 was appropriate?

22 MR. SHAYGAN-FATEMI: I did, Your Honor. I -- just a
23 moment of indulgence.

24 THE COURT: Yes.

25 MR. SHAYGAN-FATEMI: Your Honor, we're referring to

1 the defense proposed at this time?

2 THE COURT: Yes.

3 MR. SHAYGAN-FATEMI: Your Honor, the reason I wanted
4 it to be unless versus until is until gives the indication to the jury
5 that it's inevitable that the defendant is going to be found guilty in
6 this case, and it's only a matter of time until he's found guilty.

7 The unless highlights his -- the presumption of innocence.
8 The unless highlights the fact that the State has the burden in this
9 case, and it's not inevitable that he's to be found guilty. And so
10 that's why the defense wanted the unless versus the until.

11 THE COURT: Okay. State, your objection for the record?

12 MR. LEXIS: NRS 175.191 is where that instruction comes
13 from, and it specifically states, Until.

14 THE COURT: All right. So I do agree that that is the
15 language of the statute. This is the one that's customarily given, so
16 that is the one that I'm going to give. I did mark the Defense
17 Proposed as Defense Proposed Number 1 and it will be marked as a
18 Court's exhibit, as well, as part of the trial record.

19 Number 2 is the:

20 If the evidence in this case is susceptible to two
21 constructions of interpretation, each of which.

22 That is Defense Proffered Instruction Number 2.

23 Mr. Shaygan.

24 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

25 I know that this issue was litigated by my office on a

1 homicide case by Joseph Abud [phonetic], who's a colleague of
2 mine. And the court in that matter, in the -- did give the instruction.
3 I know that other district courts in this jurisdiction have given this
4 instruction. It's good case law that I've cited to, the *Bales v State*
5 [phonetic], the *Crane v State* [phonetic], and the *Mason vs. State*.
6 And I understand that it's a discretion -- you know, the courts may
7 view it as a discretionary standard as to whether or not the Court
8 can choose to give the instruction or not, it's the defense's position,
9 Your Honor, that the Court must give the instruction. And that is
10 why we included it in the instructions, and we'll submit it based on
11 that.

12 THE COURT: State?

13 MR. LEXIS: It goes to reasonable doubt, it's confusing,
14 and their own case that they cite, *Mason vs. State* states that it's not
15 ever refused to give this instruction when the jury has been
16 properly instruction on reasonable doubt, which they obviously are
17 going to be.

18 THE COURT: All right. So I agree, I do think that it is
19 confusing to the jury. I also know that it is discretionary. So in my
20 discretion, I am choosing not to give it. But it will marked as part of
21 the court record.

22 Defense Proffered Number 3 is the reasonable doubt
23 standard, requires the jury to reach a subjective state of mere
24 certitude. This is Defense Proffered Number 3.

25 Mr. Shaygan.

1 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

2 I had indicated to the Court that the general reasonable
3 doubt instruction can be confusing, even when attorneys read it, it
4 is not abundantly clear exactly what it is. That's why I included the
5 subjective certitude instruction, if you want to call it that. And the
6 case law that I've cited, the defense believes that it's good case and
7 we believe that the Court should give this instruction to provide a
8 little bit more guidance as to what reasonable doubt means. And
9 that's why we included it and I'll submit it based on that.

10 THE COURT: All right. State?

11 MR. LEXIS: Again, goes to reasonable doubt. In addition,
12 in *Rudolph* itself, it's dicta at best, they specifically state jury
13 instruction of reasonable doubt was correctly provided as set forth
14 in NRS 175.211.

15 THE COURT: All right. So the reasonable doubt
16 instruction that is used in every case will be used in this case, and I
17 think that that puts -- that properly informs and instructs the jurors.
18 So I'm not going to give this one.

19 Number 4, Defense Proffered Number 4:

20 If the State fails to prove beyond a reasonable doubt.

21 All right. So Proffered 4, 5, 6, 7, and 8 are all *Crawford* --
22 proposed *Crawford* instructions in regards to the charges in this
23 case.

24 Mr. Shaygan.

25 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

1 With regards to our Crawford instructions, the defense
2 included these as, essentially, an inverse instruction. We believe
3 that *Crawford* allows us to do that. We -- I had mentioned to the
4 Court that oftentimes we can -- my office will pick an element and
5 have an inverse based on the element. This is even more broad
6 than that, which we think should be even more of a reason for the
7 Court to give the instruction.

8 The language that we used to draft these instructions was
9 taken from the charging document in this case, specifically, the
10 information. There was no added language that I recall that
11 changes anything in this case. Nothing that is included here
12 changes what the instructions are. We believe that we should be
13 given each and every one of these inverse instructions. And we
14 believe that *Crawford* allows us to give them. And I'll submit it
15 based on that.

16 THE COURT: State?

17 MR. LEXIS: The State objects to the form. Basically, just
18 regurgitating what's in the information does not go to any specific
19 element. As cited in their own paragraph that they include at the
20 bottom of their proposed instruction, it specifically states it goes to
21 the defense position on their theory, which, obviously, has to go to
22 some specific element.

23 The Court has offered them to, if they want to come up
24 with some specific position or theory to go to a specific element,
25 they -- the Court gave them that opportunity. They declined.

1 THE COURT: So what I said was, basically, in the
2 *Crawford* case, the defense's theory in that case was that the State
3 had -- the defendant did not have the heat of passion that was
4 required to commit that crime. And so the defense had requested a
5 jury instruction for the jury so that the jury would be instructed that
6 if the State failed to prove to them that the defendant had been
7 acting within this heat of passion, then they had to find him not
8 guilty.

9 And so I do think that it needs to be a specific theory of
10 the case. I don't think if you charge a person with 30 charges, then
11 the defense gets to say the opposite thing of all 30 charges.

12 So what I offered to Defense is I said, Look, I'm not -- I
13 don't pretend to be an attorney on your case, but it seems to me
14 from opening arguments and from where everyone is going thus
15 far is this a ID case, which both attorneys agreed with me. And I
16 said, If you wish to, you know, ride two horses and said it's an ID
17 case, but, for instance, just for example, if you find it's him, the
18 State has not met the burden of showing he had the intent to kill,
19 and offered a *Crawford* instruction in regards to whether or not the
20 State had proved the defendant, in his mind, had the intent to kill
21 someone. But they -- it's my understanding that Defense is stating
22 no, that they don't want that.

23 And without any other reason of showing you what the
24 theory of their case is and how specific detailed *Crawford*
25 instruction could be made, I am not going to be giving that.

1 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

2 THE COURT: You're welcome. So 4 through 8 have to do
3 with those. So those have all been marked. So these can all be
4 court's exhibits. They can just be Court Exhibit Number 1. And
5 then I put Defense proffered on each of those with the correlating
6 number.

7 All right. Okay. So I will, as we're sitting here, just make
8 those few corrections on the Word document, and then I'll print a
9 set, make sure we're all on the same page.

10 MR. SHAYGAN-FATEMI: Your Honor?

11 THE COURT: Yes?

12 MR. SHAYGAN-FATEMI: Are we going to address the
13 verdict form?

14 THE COURT: Oh, yeah. I'm sorry. Yeah.

15 On the verdict form, let's talk about that.

16 Go ahead.

17 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

18 I believe, Your Honor, the State's verdict form has the
19 guilty's and then it lists not guilty as an option. So not guilty is
20 second. And given the presumption of innocence, given the State's
21 burden to prove this case beyond a reasonable doubt, it's the
22 defense's position that not guilty should actually be the first option
23 and then the rest of the -- and then the guilty's.

24 So based on that, we ask that the verdict form be adjusted
25 to reflect not guilty be mentioned first for each count, and then

1 guilty as an option, and so and so forth for each count.

2 THE COURT: State?

3 MR. LEXIS: We'd ask that you follow what the State has
4 submitted. This jury [indiscernible] is going to be properly
5 instructed on reasonable doubt.

6 THE COURT: All right. So I think that the jury verdict is
7 fine as is. I don't think that there's any reasoning for one to go in
8 front of the other, and it's customarily done the way it is here. So
9 we're going to leave it as is, but -- as is, but the objection is noted
10 for the record.

11 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

12 MR. LEXIS: And, Judge, I don't know now it's printing out
13 on your printer, but it looks like on ours, it -- the boxes came all
14 messed up.

15 THE COURT: Yeah. I'm working on it.

16 MR. LEXIS: So you might not be -- sorry about that.

17 THE COURT: That's okay. It's something about, I don't
18 know, the DA's Office Word sometimes doesn't always --

19 MR. LEXIS: Convert it correctly?

20 THE COURT: Yeah. I don't know why, but it happens
21 sometimes and other times it doesn't. But no worries.

22 MR. LEXIS: Oh, one last thing, Judge, that I've already
23 talked to Defense counsel about that I was going to put on the
24 record.

25 Yesterday, when Mr. Ramos took the stand, he was

1 obviously nervous. At one point, he gets frustrated, he even turns
2 to you, asks for a break. He's obviously spoken to the district
3 attorney's office prior to yesterday, as well as investigators who
4 have got him here. And then he refers to them as officers and so
5 forth.

6 I reached out to Mr. Hauser, asked him if he wants to
7 recall Mr. Ramos to flush all that out, I'd be more than happy to
8 bring him in today. Mr. Robson said that that would not be
9 necessary.

10 MR. HAUSER: That's correct.

11 THE COURT: Okay.

12 MR. HAUSER: Yeah, I agree with everything Mr. Lexis --

13 THE COURT: All right.

14 [Pause in proceedings.]

15 MS. GOODMAN: And, Your Honor, just the last thing.

16 THE COURT: Yeah.

17 MS. GOODMAN: We also have redacted, and I apologize,
18 I don't remember what the exact State exhibit it was, but it was that
19 fingerprint, the fingerprint analysis report. And we had redacted
20 that LVMPD language out of the document and re-admitted it as
21 another -- as the same exhibit. But we just wanted to put that on
22 the record to ensure that that was done. I know it was published in
23 front of the jury, but taken down soon thereafter it was brought to
24 our attention.

25 THE COURT: Yeah. So I saw it, and I don't know how to

1 explain it, it was, like, partially -- I couldn't see the whole thing, but I
2 could see, like, the top of the box. And knowing what these look
3 like, I immediately just called everybody to the bench so we could
4 talk about it. Because it was a document that was stipulated into.

5 And so sometimes attorneys don't care about those things
6 and stipulate into it. So I just wanted to make sure everybody was
7 on the same page. I don't think it was something that the jury
8 would have either, A, recognized or really even seen, like I stated.
9 Because by the time I saw it, it was only -- I don't know, the way the
10 paper was up there, it was only half -- the box where it says, LVMPD
11 Archive Prints From date -- the 2016 date, I could only see half of
12 that. So that's why I needed the document to come up, so I could
13 see it in its full. So I don't think there were any issues.

14 But I'm happy to hear from Defense, if you think
15 differently.

16 MR. HAUSER: Nope. We're good.

17 THE COURT: All right. Sounds good.

18 MS. GOODMAN: Thank you, Your Honor.

19 [Pause in proceedings.]

20 THE COURT: All right. So everyone has had the
21 opportunity to look through the instructions.

22 Any further objections than what we've already stated on
23 the record, Mr. Shaygan?

24 MR. SHAYGAN-FATEMI: No, Your Honor.

25 THE COURT: And are these a fair and accurate depiction

1 of the jury instructions that we settled?

2 MR. SHAYGAN-FATEMI: They are, Your Honor.

3 THE COURT: Same questions for you, Mr. Lexis, in
4 regards to any objections?

5 MR. LEXIS: No, ma'am.

6 THE COURT: And these are an accurate reflection of the
7 jury instructions that we settled?

8 MR. LEXIS: Yes, ma'am.

9 THE COURT: All right. So I will have a copy of these
10 prepared for each of the jurors, and I'll see you guys in 45 minutes.

11 THE DEFENDANT: Ms. Bluth, may I ask you a question?

12 THE COURT: Yes.

13 THE DEFENDANT: A couple of questions?

14 THE COURT: Yeah, of course.

15 THE DEFENDANT: How would I go about -- I asked
16 Mr. Hauser to ask you, but it wasn't brought up. How would I go
17 about getting a hospital visit with police escort to see my mom?

18 MR. HAUSER: This is where I was about to go, Judge,
19 before you left the bench.

20 THE DEFENDANT: She's going to pass away soon.

21 THE COURT: Okay.

22 THE DEFENDANT: And I would just like to see her one
23 time. I'm not asking to get out or anything, I just would like to say
24 bye to her.

25 THE COURT: So --

1 MR. HAUSER: Mr. Donko informed us of this, that he
2 received a call last night that his mother's on life support at UMC. I
3 believe you said your sister intends to eventually remove her from
4 the life support probably now, and she just --

5 THE DEFENDANT: And she's been fighting on her last
6 two years on breast cancer, Your Honor.

7 THE COURT: Oh. Okay.

8 MR. HAUSER: And he's wondering if he can get a
9 supervised visit to UMC. Not an OR, by any stretch.

10 THE COURT: No.

11 MR. HAUSER: But if there's some way we can try and
12 arrange that.

13 THE COURT: So I know that that has to be done by
14 motion, and I know also that it has to be -- because Metro's actually
15 the one who does the transport. And so I know I've seen it -- I think
16 I saw it one other -- I mean, I've seen it a couple of times, but the
17 only time where I was a part of it was a somewhat similar situation,
18 but it was actually a funeral. And there was gang involvement on
19 both sides. And so Metro actually refused any type of transport
20 because of the danger.

21 So that definitely has to be -- that has to be done in
22 motion, because there are so many moving parts to it.

23 MR. HAUSER: No problem.

24 THE COURT: I'm, obviously, happy to hear it, like, on
25 Order Shortening Time.

1 MR. HAUSER: Uh-huh.

2 THE COURT: But I have to just make sure everybody has
3 notice of it.

4 MR. HAUSER: Okay. I'll try and file something as soon as
5 I can.

6 THE COURT: Okay.

7 THE DEFENDANT: And one last thing, Your Honor.

8 THE COURT: Yes, sir.

9 THE DEFENDANT: I would like to take the stand today on
10 my own behalf.

11 THE COURT: Okay. So I -- that's actually what I was
12 going to do right now.

13 THE DEFENDANT: I apologize for my frustration
14 yesterday and Your Honor in court.

15 THE COURT: That's all right. I know that trial's a
16 frustrating thing. I get it. So I just have to ask you a few questions.
17 All right?

18 So under the Constitution of the United States and under
19 the Constitution of the State of Nevada, you cannot be compelled to
20 testify in this case; did you understand that?

21 THE DEFENDANT: Pardon me?

22 THE COURT: That you can't be forced to testify.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You may, at your own request, give up this
25 right and take the witness stand and testify. If you do, you will be

1 subject to cross-examination by the district attorney and anything
2 that you may say, be it on direct or direct examination, will be the
3 subject of fair comment when the deputy district attorney speaks to
4 the jury in his or her final argument. Do you understand that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: If you choose not to testify, the Court will
7 not allow the deputy district attorney to make any comments to the
8 jury because you have not testify; do you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: If you elect not to testify, the Court will
11 instruct the jury, but only if your attorney specifically requests as
12 follows:

13 The law does not compel a defendant in a criminal case to
14 take the stand and testify. And no presumption may be raised and
15 no inference of any kind may be drawn from the failure of a
16 defendant to testify.

17 Do you have any questions about these rights that I have
18 explained?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: You are further advised that if you have a
21 felony conviction and more than 10 years has not elapsed from the
22 date you have been convicted or discharged from prison, parole, or
23 probation, whichever is later, and the defense has not sought to
24 preclude that coming before the jury, and you elect to take the
25 stand to testify, the deputy district attorney, in the presence of the

1 jury, will be permitted to ask you the following things:

2 1. Have you been convicted of a felony?

3 2. What was that felony?

4 3. When did that happen?

5 However, no details of that may be gotten into.

6 Do you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Okay. All right.

9 THE DEFENDANT: May I ask one question?

10 THE COURT: Yeah.

11 THE DEFENDANT: You said felonies, right?

12 THE COURT: Yep.

13 THE DEFENDANT: So it would only be the attempt
14 burglary and the attempt grand larceny, not the attempt battery,
15 which is to actually bodily harm, that was a misdemeanor.

16 THE COURT: So attempt battery with substantial bodily
17 harm could either be a felony or a gross --

18 THE DEFENDANT: It was a misdemeanor.

19 THE COURT: But it was pled down to?

20 THE DEFENDANT: Yes.

21 THE COURT: To a battery?

22 MR. HAUSER: To gross misdemeanor in this case.

23 THE COURT: It's to gross? Okay.

24 So, correct, then, yes.

25 THE DEFENDANT: Okay. Thank you.

1 THE COURT: So it can only be felonies within the last 10
2 years.

3 THE DEFENDANT: Thank you.

4 THE COURT: All right. And so that is completely up to
5 you. And it may change as we go. Only thing is, is I have to pull it
6 out of the jury instructions if we're not going to use it.

7 MR. HAUSER: Right. Judge, if you're set with the
8 canvass, I do want to make a record about what we're doing here.

9 THE COURT: Okay.

10 MR. HAUSER: Mr. Donko and I have had numerous
11 conversations with Mr. Shaygan as well. It is against our advice
12 that he testifies today. We've made that very explicitly clear.

13 THE COURT: Okay.

14 MR. HAUSER: I've advised him that his felonies will come
15 in. I've also advised him that if certain doors are opened, that gross
16 misdemeanor for attempt battery with substantial bodily harm will
17 also be introduced to the jury.

18 There's another case out there that I don't believe would
19 come in, based on what I anticipate his testimony being. I don't
20 want to open the door to any of that. I've advised him of the risks
21 of that, knowing what the jury's going to learn. It's his right, but I
22 did want to make a record that he has received all of that advice.

23 THE COURT: All right. So your counsel, both
24 Mr. Shaygan and Mr. Hauser, have discussed those concerns with
25 you?

1 THE DEFENDANT: You said convicted felonies, right?
2 Commissions?

3 THE COURT: Yeah.

4 THE DEFENDANT: I'm not convicted of those felonies that
5 I'm being -- what I'm being heard for on -- besides this.

6 THE COURT: Right. So the -- what was it, attempt burg
7 and grand larceny?

8 THE DEFENDANT: It was --

9 MR. HAUSER: Yeah.

10 THE DEFENDANT: -- yeah, attempt burglary and attempt
11 grand larceny. I'm being heard on 25 counts of possession of
12 documents that they seized from my girlfriend's house when they
13 did the search warrant for this.

14 THE COURT: Yeah. No, I don't think that -- I think what
15 Mr. Hauser's saying is it's unlikely that that would come in. But you
16 have to be careful about the types of things that you say, because
17 sometimes you -- we use the word you open the door, right? So, if
18 for some reason you said something like, I've never been involved
19 in anything violent in my whole life. Something like that. Right?
20 And then the State would be, like, Well, that's not true, because
21 you've got a gross misdemeanor for attempt battery with
22 substantial bodily harm.

23 So that's just what Mr. Hauser's saying, is, like, that --
24 the 25 counts shouldn't come in.

25 THE DEFENDANT: Uh-huh.

1 THE COURT: But for some reason you open the door,
2 then the State would approach and say, Hey, look, I think he just
3 opened the door to us being able to get into that. And then your
4 defense are -- would make an argument one way or the other and
5 then I would --

6 THE DEFENDANT: I wouldn't say that, ma'am. But I
7 would like you -- you and me clear that this is from when I was 18
8 years old. I'm 30 years old now.

9 THE COURT: What was 18?

10 THE DEFENDANT: And when I caught that attempt grand
11 larceny, I had pawned a camera for a friend. And attempt burglary,
12 I broke my girlfriend's window to get my belongings at her house,
13 because she was holding them from me.

14 THE COURT: Okay.

15 THE DEFENDANT: And I -- me being young and naive, I
16 took a first deal and, you know, and there's a lot of -- Your Honor,
17 and I understand if you guys got a job to do. And it's not for you to
18 say if I'm innocent. It's them to say if I'm innocent. I know I'm
19 innocent. But there's a lot of state -- facts that haven't been brought
20 up during questioning the witnesses.

21 THE COURT: Sure. I understand.

22 THE DEFENDANT: You know, like Woods stating that I
23 had black pants on, but Gilbert's saying I had khaki shorts on. You
24 know? And I feel like if -- I'm confused, I don't -- it's my first time
25 going to trial. I would like to know what I could do to not fix it, but

1 to make you understand that it's not fair what's going on right now.
2 It's -- I'm getting yelled at -- not yelled at, but every time I speak
3 about what I feel like I should do, I'm getting shut down.

4 THE COURT: Right. But I --

5 THE DEFENDANT: I'm getting shut down. The DA, I
6 understand, didn't know nothing about me, they're doing their job.
7 But this is, like, once again, my life that we're talking about.

8 THE COURT: Sure.

9 THE DEFENDANT: And her winking her eye at them and
10 laughing, and, like, it's not funny to me, Your Honor.

11 THE COURT: Who winking?

12 THE DEFENDANT: The DA. You know, I mean, when
13 they're -- when she brought the other guy back in and you
14 overruled it, that Gilbert about pointing me out, saying that I was
15 the one that -- when she got up to get to the podium, she, like, did a
16 little bow and she winked her eye at them. You know, and --

17 THE COURT: How could -- sir, how could you see her
18 wink her eye?

19 THE DEFENDANT: I was right here and I was looking.

20 THE COURT: But if she --

21 THE DEFENDANT: She came right -- like, she ducked off
22 right here, and she winked -- she bowed a little bit and she winked
23 her eye at him.

24 THE COURT: Okay. But if she's looking at them and
25 winking --

1 THE DEFENDANT: She wasn't look -- no, she was getting
2 out of her seat.

3 THE COURT: Okay. Well, I'm sorry, I --

4 MR. HAUSER: I think he means us.

5 THE COURT: Oh, winking at you guys?

6 MR. HAUSER: Yeah.

7 THE DEFENDANT: Yeah. Yeah.

8 THE COURT: Oh. Okay. Sorry.

9 MR. HAUSER: Yeah. Not the jury.

10 THE COURT: I thought you meant winking at the jury.

11 THE DEFENDANT: Like, we got him. And I know there's a
12 fingerprint on the license plate inside of the car. And I know there's
13 a DNA, my DNA and somebody else's DNA.

14 THE COURT: Uh-huh.

15 THE DEFENDANT: But it's also not brought up that I live
16 nine houses down from the shooting. You know, it's not brought
17 up that at 12:14 the shooting happened, but I'm on video at 12:15
18 walking to -- it's physically impossible for me to drive down
19 Charleston --

20 THE COURT: Right, but do you -- the detective hasn't
21 even been -- the lead detective hasn't even testified. A lot of these
22 things are things that I'm sure your attorneys are going to bring up.

23 THE DEFENDANT: I know, Your Honor. But I asked him --

24 THE COURT: But here's the thing --

25 THE DEFENDANT: -- for [indiscernible] and they haven't.

1 THE COURT: Okay. And if you -- but what I've told you is,
2 is what questions they ask are strategic decisions that are their
3 decisions as your trial counsel. If you feel like there are certain
4 things that you want asked, you have the opportunity to represent
5 yourself and ask whatever questions you deem appropriate, as long
6 as they're legally admissible.

7 So you have them or you choose to represent yourself.

8 THE DEFENDANT: I just want it to be fair, Your Honor.
9 That's all.

10 THE COURT: Okay.

11 THE DEFENDANT: I just -- I got a whole stack of report --
12 detective questioning people in here where it's all messed up. And
13 it's not being brought up that, like, when they came to see me in
14 jail, I tried to read them a couple, and they said -- he said, We don't
15 have time for that. You know? And how could you not take two or
16 three minutes out to read my report, when I could be facing the rest
17 of my life in prison for --

18 THE COURT: Okay.

19 THE DEFENDANT: I'm scared. Your Honor, I didn't shoot
20 these people. I've never owned a gun.

21 THE COURT: Okay. So do you want to continue with
22 them, or would you like to represent yourself?

23 THE DEFENDANT: How would that go? What questions
24 would I be able to ask?

25 THE CLERK: So I -- that's the problem is I can't counsel

1 you. You would be able to ask any questions that are legally
2 admissible. So, for instance, you wanted them to ask that one
3 gentleman whether or not he's a gang member; not admissible.

4 THE DEFENDANT: I understand that. I understand that.

5 THE COURT: So --

6 THE DEFENDANT: Like, Woods stating that the brothers
7 are coming, what brothers are coming? You know what I mean?
8 And that wasn't asked. He obviously -- these other people were
9 showing up to that address, but he doesn't state what -- who it is.

10 THE COURT: I don't -- what do you mean? He didn't
11 say -- what are you talking about? Oh, you mean in the report.

12 THE DEFENDANT: In the report.

13 THE COURT: Oh, sorry. I don't know, I thought you
14 meant -- I thought you were talking about on the stand.

15 THE DEFENDANT: Gilbert states that he left right after the
16 shooting. Why wouldn't somebody leave after the shooting and go
17 to AutoZone?

18 THE COURT: Okay. But I can't have --

19 THE DEFENDANT: Wouldn't you be worried about me?

20 THE COURT: -- this conversation with you, sir, because
21 this is not my job. My job is to make sure you are aware of your
22 rights. Your choices are to continue on with your counsel, or if
23 you'd like --

24 THE DEFENDANT: They pretty much told me already I'm
25 guilty -- I'm going to be pled guilty.

1 THE COURT: Okay. So then would you like to represent
2 yourself, if you feel like they're not doing the job?

3 THE DEFENDANT: What's my other options?

4 THE COURT: These are your two options: Them or you.
5 We're in the middle of a trial on the last day of trial. So --

6 THE DEFENDANT: I just feel like this trial went fast and
7 not -- I just want to know what my options -- there's -- I feel like
8 there's got to be something else that I can do. Have a new trial set
9 or something else that I should be able to do, you know?

10 THE COURT: No.

11 THE DEFENDANT: It wasn't -- it -- I've been shut down
12 every time I whispered to him to ask a question, it's no, we got this.
13 We got this. We got this.

14 THE COURT: Okay.

15 THE DEFENDANT: You know?

16 THE COURT: So until you tell me that you would like to
17 represent yourself, we're going to carry on as we've been carrying
18 on. If at some point you change your mind, please let me know,
19 because I have to canvass you on making sure you understand your
20 rights to represent yourself.

21 As you sit here right now, and it -- honestly, it doesn't
22 matter to me. I want you to do whatever you feel comfortable with.
23 Do you believe you're going to testify? I'm going to make this jury
24 instruction packet.

25 THE DEFENDANT: I'm going to testify.

1 THE COURT: Okay.

2 THE DEFENDANT: Obviously, I'm not going to represent
3 myself, because I'm not a lawyer.

4 THE COURT: Okay.

5 THE DEFENDANT: And the only things I looked up was
6 the things that would stick out to a 5-year-old. You know? And the
7 DA just having the same comeback, oh, he had a red shirt on, he
8 had a red shirt on. You know how many people wear red shirts?

9 THE COURT: All right. So --

10 THE DEFENDANT: I don't wear 4X. I wear 1X. This is
11 a 1X shirt. I've been in jail eating.

12 THE COURT: That's something that you can talk about
13 when you testify. All right.

14 So we're going to go off. And --

15 MR. HAUSER: Before we do that, Judge.

16 THE COURT: Yes, sir.

17 MR. HAUSER: Just one more brief addition to the record.

18 I've also advised him that he's only allowed to testify to
19 things of which he has personal knowledge. That we can't get up
20 there and just say, I disagree with these witnesses' statements that I
21 saw in the discovery.

22 THE COURT: Right. So when you testify, you have to
23 testify in regards to -- you don't just get to turn to them and just
24 give a narrative. Your attorneys will ask you specific questions and
25 then you have to answer the questions that they ask you.

1 THE DEFENDANT: Am I allowed to pick some of the
2 questions?

3 THE COURT: You can talk to them about questions that
4 you deem appropriate and that you'd like them to ask you so that
5 you can answer in front of the jury.

6 Anything else on the record?

7 MR. HAUSER: No.

8 THE DEFENDANT: All right. Let's go off.

9 [Court recessed at 12:00 p.m., until 12:43 p.m.]

10 [Outside the presence of the jury.]

11 THE COURT: All right. We are back on the record in
12 C-345584-1, State of Nevada versus Ted Michael Donko. He's
13 present with both attorneys, Mr. Shaygan and Mr. Hauser. Both
14 deputy district attorneys, Ms. Rose Goodman and Mr. Lexis are
15 present.

16 Anything outside the presence before I bring the jury in,
17 guys?

18 MR. SHAYGAN-FATEMI: Not from the defense, Your
19 Honor.

20 MS. GOODMAN: Not from the State, Your Honor.

21 THE COURT: All right. Let's go.

22 [Jury reconvened at 12:44 p.m.]

23 THE COURT: All right. Good morning, ladies and
24 gentlemen. Welcome back. We are back on the record in State of
25 Nevada versus Ted Michael Donko. He is present with both of his

1 attorneys, Mr. Shaygan as well as Mr. Hauser. Both deputy district
2 attorneys, Ms. Rose Goodman is -- as well as Mr. Lexis are also
3 present.

4 State, next witness?

5 MS. GOODMAN: State will call Detective Marin.

6 THE COURT: And both sides stipulate to the presence of
7 the jury?

8 MS. GOODMAN: Yes, Your Honor.

9 **JASON MARIN,**

10 [having been called as a witness and first duly sworn, testified as
11 follows:]

12 THE CLERK: Thank you. Please have a seat. Please state
13 your complete name, spelling both first and last names for the
14 record.

15 THE WITNESS: Jason Marin, J-A-S-O-N M-A-R-I-N.

16 THE CLERK: Thank you.

17 **DIRECT EXAMINATION**

18 BY MS. GOODMAN:

19 Q Good afternoon.

20 A Good afternoon.

21 Q How are you employed?

22 A As a police officer with Las Vegas Metropolitan Police
23 Department.

24 Q Okay. And in what capacity?

25 A As a detective.

1 Q Okay. And how long have you been employed there?
2 A With the department entirely, ma'am?
3 Q Oh, yeah, I apologize. I'm so sorry.
4 THE COURT: I hear it, but I can't find it.
5 THE WITNESS: That might be my phone in the --
6 THE COURT: Oh, in the anteroom?
7 MS. GOODMAN: Okay.
8 THE WITNESS: Yes. Sorry.
9 THE COURT: Do you mind if my marshal just puts it on
10 silent?
11 THE WITNESS: Yes, that's fine.
12 THE COURT: Okay.
13 MS. GOODMAN: Thank you so much.
14 BY MS. GOODMAN:
15 Q And I'm sorry, with Las Vegas Metropolitan Police
16 Department as a whole?
17 A A little over five years.
18 Q Okay. And how long have you been a detective?
19 A Approximately six months.
20 Q Okay. Now, I'm going to direct your attention back to
21 October 1st, 2019. Okay. Were you a detective back then?
22 A Yes.
23 Q I know this was about four months ago?
24 A Yes.
25 Q Okay. And in your capacity as a detective, you're

1 assigned cases?

2 A Yes.

3 Q And you're assigned to follow up on those cases?

4 A Yes.

5 Q Okay. You were called out to 56 Linn lane?

6 A Yes.

7 Q Here in Clark County, Las Vegas, Clark County, Nevada?

8 A Yes.

9 Q All right. And what was the details of those calls that you
10 came in?

11 A There was a shooting that had occurred and two
12 individuals were shot.

13 Q Okay. And did you identify the two people eventually that
14 got shot?

15 A Yes.

16 Q And who did you identify those two as?

17 A Jonathan and Fernando.

18 Q Okay. Jonathan Sanchez and Fernando Espinoza?

19 A Yes.

20 Q All right. Now, when you arrived, was patrol already on
21 the scene?

22 A Yes.

23 Q Okay. Did you conduct a walk-through of the initial
24 scene?

25 A Yes.

1 Q Okay. And this is of 56 Linn Lane?

2 A Yes.

3 Q Okay. What did you observe?

4 A I observed cartridge casings in the roadway in front of 56
5 North Linn Lane. I observed a white pickup truck reversed into the
6 driveway that contained bullet impacts. And I observed bullet
7 impacts to the garage door of the residence, 56 North Linn Lane.

8 Q Okay. And I'm showing you State's Exhibit 11; and,
9 Detective, are those marked placards those casings?

10 A Yes.

11 Q Okay. And you referred to the white pickup truck that was
12 backed up into the driveway?

13 A Yes.

14 Q Okay. So that's a fair and accurate depiction of that scene
15 that day?

16 A Yes.

17 Q All right. Now, let's talk a little bit about those casings.
18 Now, as a detective, did you order fingerprints or DNA from those
19 spent casings?

20 A No. It's not standard procedure for us to request the DNA
21 or fingerprints off cartridge casings.

22 Q And why is that?

23 A It's typically unreliable, and typically, fingerprints and
24 DNA are not located on the casings or cartridges.

25 Q Okay. These were already fired, right?

1 A Yes.

2 Q Okay. And so typically, when it gets fired out of a
3 weapon, fingerprints and DNA aren't collected on those casings?

4 A Correct.

5 Q Okay. And you said that you observed two impacts to the
6 garage door?

7 A Yes, it was two impacts to the garage door.

8 Q All right. Were the victims present?

9 A They were not. They were -- already had -- by the time we
10 arrived, they were already transported to UMC.

11 Q Okay. Now, did you make contact with the people on
12 scene?

13 A Yes.

14 Q Okay. Who did you make contact with?

15 A I made contact with DeAndre Woods.

16 Q Okay. DeAndre Woods, now, after making contact with
17 him, did you learn that there were occupants of that residence?

18 A Yes.

19 Q At the time of the shooting?

20 A Yes.

21 Q Okay. And who was in that residence?

22 A Kesha and her kids.

23 Q Okay. And, now, you observed DeAndre Woods, correct?

24 A Yes.

25 Q All right. And in your training and experience, you

1 learned how to look at someone's demeanor?

2 A Correct.

3 Q All right. Now, did you -- did he appear to be intoxicated
4 at all?

5 A No.

6 Q Okay. Did he have a smell of alcohol on his breath?

7 A No.

8 Q Okay. So DeAndre seemed pretty normal?

9 A Yes.

10 Q Okay. Was he still a little scared?

11 A Yes.

12 Q Okay. Now, based on the interview that you had with
13 DeAndre, did you develop the description of the suspect?

14 A Yes.

15 Q And what was that?

16 A It was a Hispanic male adult, 5-11, 200 pounds, wearing a
17 red t-shirt and nearly bald hair.

18 Q Okay. And, now, did you also learn that DeAndre had a
19 previous interaction with that suspect the day prior?

20 A Yes.

21 Q Okay. And was that a short but aggressive interaction?

22 A Yes. He stated that he was in his driveway --

23 Q Yeah -- okay. Go ahead.

24 A No, go ahead. I'm sorry.

25 Q He was in his driveway?

1 A Yes. DeAndre was in his driveway and the -- Ted Donko
2 had approached him and they had a brief interaction, and he was
3 asking for Shorty.

4 Q Okay. And he was -- Ted Donko was with another guy?

5 A Yes.

6 Q Did he give a description of the other guy?

7 A Yes. He said he was 5-7, smaller build, skinnier build, and
8 I can't recall if it was a WMA or HMA as well.

9 Q Okay. All right. Now --

10 THE COURT: Sorry. For the record, what does WMA and
11 HMA mean?

12 THE WITNESS: I apologize. I apologize.

13 MS. GOODMAN: I'm sorry.

14 THE WITNESS: White male adult or Hispanic male adult.

15 BY MS. GOODMAN:

16 Q Okay. And I'm sorry, sometimes we're so familiar with
17 terms that --

18 A Yes. I apologize.

19 Q -- we wouldn't want to use abbreviations right now.

20 A I apologize.

21 Q All right.

22 MS. GOODMAN: Thank you, Your Honor.

23 Q All right. So after your interaction with DeAndre Woods,
24 did you come to learn that the suspect vehicle was found?

25 A Yes.

1 Q Okay. And where did you find -- where did -- did you
2 locate that vehicle?

3 A No, patrol did. Patrol officers.

4 Q Okay. And where, to your knowledge, was that vehicle
5 located?

6 A I believe it was located on Blue Sea and Linn Lane just
7 west of.

8 Q Okay. And showing you State's Exhibit 7. Okay. Do you
9 recognize this area?

10 A Yes.

11 Q Okay.

12 A I apologize, it was -- the vehicle was located on White Cap
13 Street and Linn Lane, just west of.

14 Q All right. And where that marker is on 56 Linn Lane, that's
15 where the shooting occurred?

16 A Yes.

17 Q Okay. All right. So showing you State's Exhibit 207; was
18 that the vehicle found?

19 A Yes.

20 Q Okay. What was the color, year, make, and model of that,
21 if you know?

22 A It was a gray Toyota Corolla, '90s model.

23 Q Okay. Now, did you have that vehicle processed for any
24 potential evidence?

25 A Yes, we had it processed for fingerprints.

1 Q Okay. Did you learn of anything that was recovered from
2 that vehicle of evidentiary significance?

3 A Yes. We record -- we recovered a license plate.

4 Q Okay. A license plate. And then I'm going to show you
5 State's Exhibit 217; is that where the license plate was found?

6 A Yes.

7 Q Okay. Did you find anything else in that vehicle?

8 A And then we also located a .40-caliber cartridge, a bullet.

9 Q Okay. So I'm showing you State's 215; is that that same
10 bullet? Is it the same cartridge?

11 A Yes.

12 Q Okay. So did that cartridge match the same head stamps
13 of the casings done on scene?

14 A Yes, they did .40 caliber S&W, I believe.

15 Q Okay. So same head stamps?

16 A Yes.

17 Q All right. Now, what was the significance of you wanting
18 to process the license plate for fingerprints?

19 A It's common for people involved in shootings to take a
20 plate off a vehicle, bring it into the vehicle with them. So we may
21 have been -- we considered it belonging to the suspects that were
22 involved in the shooting.

23 Q Okay. Now, did you also -- did patrol officers also locate a
24 register in the area?

25 A Yes.

1 Q Okay. And I'm showing you State's Exhibit 229; is that
2 that red shirt?

3 A Yes.

4 Q Okay. And then I'm going to refer you back to State's
5 Exhibit 7. If you can see this map here, I'm going to zoom it up.
6 And, Detective, you see a mouse that's next to you?

7 A Yes.

8 Q Right there? If you squiggle the mouse and you hit that
9 red cursor to the very bottom right. And can you mark where the
10 shooting -- can you circle where the shooting happened?

11 A [Witness complies.]

12 Q And that's at 56 Linn Lane; is that correct?

13 A Yes.

14 Q Okay.

15 MS. GOODMAN: And for the record, the witness had
16 circled 56 Linn Lane.

17 THE COURT: Okay.

18 BY MS. GOODMAN:

19 Q And can you circle where the Toyota Corolla was found?

20 A [Witness complies.]

21 Q And -- thank you. And then can you circle where the red
22 shirt was found?

23 A [Witness complies.]

24 Q Thank you. Okay.

25 So this was just right in the same neighborhood, right?

1 A Correct.

2 Q Okay. Now, did you also learn while on the scene that
3 there was somebody who witnessed an individual driving the
4 vehicle, which was recovered as well as exited the vehicle after the
5 shooting?

6 A Yes.

7 Q Okay. And what was the name of that individual?

8 A Genaro Ramos.

9 Q Okay. And based off of the interview that you -- the
10 investigation and after his interaction with the detectives, did you
11 eventually learn to discover the potential path of the suspect?

12 A Yes.

13 Q Okay. And where was that?

14 A We believe that he may have went westbound on
15 Charleston, up Christie to White Cap, made a right, eastbound, and
16 then parked facing west, just east of Linn Lane, where the vehicle
17 was located.

18 Q Okay. And where did the suspect go after he exited the
19 vehicle?

20 A He then walked northbound on Surf Lane.

21 Q Okay. And did you or other detectives comb that area for
22 surveillance?

23 A Yes.

24 Q Okay. And did you recover surveillance?

25 A Yes.

1 Q Okay. And did you recover surveillance from that 5675
2 Dixie Street?

3 A Yes.

4 Q This is the surveillance that you had recovered that day?

5 A Yes.

6 [Video played.]

7 Q Now, Detective, I'm assuming that you watched that
8 multiple times?

9 A Yes.

10 Q Okay. And why was that of significant value to you?

11 A That matched the description of the shooting suspect.

12 Q With his red shirt on?

13 A Red shirt on and nearly bald hair.

14 Q Okay. And was he headed the same direction where the
15 red shirt was actually found?

16 A Yes.

17 Q Okay. Now, the part of your investigation, did you learn
18 where the suspect was residing at at the time of the shooting?

19 A Yes. During an interview with him.

20 Q Okay. And where was that?

21 A That was at 299 Linn Lane.

22 Q I'm going to zoom out. And can you indicate on the map
23 in the same fashion where that address is?

24 A [Witness complies.]

25 Q So just up the street from the shooting; is that correct?

1 A Yes.

2 Q Okay. Now, given the -- all that information, does it -- did
3 it affect your investigation at all that the red shirt suspect was
4 actually driving that vehicle just within that same block, minutes
5 after the shooting?

6 A Yes.

7 Q It changed your investigation?

8 A I'm sorry, can you repeat the question?

9 Q Oh, I'm sorry.

10 A I apologize.

11 Q How -- no, it's okay. It's poorly -- it was -- it's probably --

12 A That's okay.

13 Q -- poorly worded.

14 Did it change your investigation that the person who
15 shot -- that was described as the shooter was wearing a red shirt,
16 but on the passenger side of the vehicle? Did it change your
17 investigation when you found out that the driver of that Toyota at
18 that time came out of the car by himself?

19 A No.

20 Q Okay. And why is that?

21 A Because there was enough time for the driver to drop
22 himself off and for the passenger to get into the driver's seat to get
23 rid of the vehicle in a neighborhood that he's familiar with.

24 Q Okay. So can you draw on the map the path you believed
25 that the car went, based off your investigation?

1 A [Witness complies.] Sorry.

2 Q Okay. So this is all within the same block, correct?

3 A Yes.

4 Q Okay. Now, if you drove that, there's a marker on the map
5 that said -- that indicates 800 feet is about this long here. If you
6 were to drive that quickly, would you be -- would you get to that
7 location in two, three minutes?

8 A I'd say -- I'd probably say less than a minute.

9 Q Okay. So it's your belief that it was time for a passenger
10 to be let out of the vehicle?

11 A Yes.

12 Q And go to the driver side?

13 A Yes.

14 Q Okay. Now, I'm going to bring your attention back to
15 October 2nd, 2019. Did you locate the victims of the shooting at
16 UMC?

17 A Yes.

18 Q All right. I'm showing you State's 153. On the monitor
19 there, there's a little arrow. Or if you toggle the map --

20 THE COURT: So move the mouse again.

21 BY MS. GOODMAN:

22 Q -- or I guess I could do it this way. We'll do it that way.
23 And, Detective, did you identify that person?

24 A Yes.

25 Q Okay. And is that Fernando Espinoza?

1 A Yes.

2 Q All right. And with Fernando, do you recall doing an
3 interview with Fernando?

4 A Yes.

5 Q Okay. And in that interview, did Fernando Espinoza
6 indicate that he was at 56 Linn Lane on October 1st, 2019?

7 A Yes.

8 Q And in that interview did he indicate that while he was on
9 the driveway, an older model Toyota pulled up to the residence?

10 A Yes.

11 Q And in that interview, did he also tell you that he saw a
12 passenger get out and ask about Shorty?

13 A Yes. He either asked about Shorty or said, Fuck Shorty.

14 Q Okay. And he -- but he didn't get a good look at the
15 shooter?

16 A Correct.

17 Q Okay. Now, you also conducted an interview with
18 Jonathan Sanchez?

19 A Yes.

20 Q Okay. Now, I'm going to bring your attention to
21 October 8, 2019. Did you end up getting the latent print results off
22 of that license plate?

23 A Yes.

24 Q Okay. And what were those results?

25 A It revealed the left middle finger of Ted Donko.

1 Q Okay. So the fingerprints that were inside the vehicle
2 matched Ted Donko.

3 Now, did your investigation stop there?

4 A No.

5 Q Okay. What did you do next?

6 A We conducted a photo lineup with DeAndre Woods.

7 Q Okay. Can you kind of tell us and the ladies and
8 gentlemen of the jury how you would put together a photo lineup?

9 A It's essentially six photos, including the suspect, in this
10 case, Ted Donko. And all of the other images or all the other
11 individuals in the six-pack are of the same description to Ted
12 Donko, height, weight, skin tone, hair style. So there isn't -- for an
13 example, since DeAndre said that the suspect was a Hispanic male
14 adult, we didn't put all Hispanic male adults in the photo lineup.
15 We matched every other person to Ted Donko.

16 Q Okay. Let's talk about that for a second. Now, DeAndre
17 said he was Hispanic and Ted Donko appeared to be a white male?

18 A Yes.

19 Q Okay. And you still did a photo lineup with DeAndre?

20 A Yes.

21 Q Okay. And why is that?

22 A We believed that may be our shooting suspect, Ted
23 Donko.

24 Q Okay.

25 A And -- I'm sorry, go ahead.

1 Q Oh, no, it's okay. Did it change your investigation into Ted
2 Donko because DeAndre described the man as a Hispanic male?

3 A No, it's possible he could have interpreted it differently or
4 just didn't -- or just thought he was a Hispanic male adult during the
5 brief interaction he had with him.

6 Q Okay. Is that common?

7 A Yes.

8 Q Okay. To get race kind of mixed up?

9 A Yes.

10 Q All right. I'm going to show you State's Exhibit 202; what
11 are those, Detective?

12 A It's a photo lineup witness instructions.

13 Q Okay. Now, how important are those photo lineup
14 instructions?

15 A Very important. We read them before we show them the
16 photos.

17 Q Okay. Because you, as a detective from Las Vegas
18 Metropolitan Police Department, don't want to make wrong
19 identifications; is that correct?

20 A Correct.

21 Q Okay. So you read this, and you read this to DeAndre that
22 day?

23 A Yes.

24 Q And, I'm sorry, and this was fast-forwarding to 10/9/2020,
25 and you read those out loud to DeAndre?

1 A Yes. 10/9/2019, just for the record.

2 Q Oh, I'm sorry.

3 A It's okay.

4 Q October 9th, 2019.

5 A Yes.

6 Q And DeAndre understood what you were -- what you

7 read?

8 A Yes.

9 Q Okay. And he signed it?

10 A Yes.

11 Q And you signed it?

12 A Yes.

13 Q Okay. And he marked -- can you read what he had wrote

14 there?

15 A Five the person that shot at me and was asking for

16 Shorty. 95 percent sure.

17 Q Okay. And he then proceeded to -- State's Exhibit 203 -- to

18 circle Number 5?

19 A Yes.

20 Q Okay. And he actually signed that?

21 A Yes.

22 Q Okay. And showing you State's Exhibit 204; who is that?

23 A That's Ted Donko in Position Number 5.

24 Q Okay. So DeAndre made a positive match to Ted Donko?

25 A Yes.

1 Q All right. Now, on November 23rd, 2019, was Ted Donko
2 eventually apprehended?

3 A Yes.

4 Q Okay. And that -- you didn't do that, correct?

5 A No.

6 Q Okay. When you first saw Mr. Donko, what -- where were
7 you at?

8 A I was at LVMPD headquarters.

9 Q Okay. And when they -- when Mr. Donko and other
10 detectives were approaching, did you see anything on his face?

11 A No.

12 Q Okay. When did you first see that, obviously, on State's
13 Exhibit 8, it appears that he has face tattoos?

14 A Yes.

15 Q Okay. So when did you actually see his tattoos?

16 A In a interview room when I was sitting two feet across
17 from him.

18 Q So that's when you first recognized that?

19 A Yeah. And it wasn't immediately apparent.

20 Q Okay.

21 A It was shortly into.

22 Q All right. And now you also identified his height?

23 A Yes.

24 Q Okay. What is Ted Donko's height?

25 A 5-11.

1 Q Okay. And what are his -- what is his eye color?

2 A Blue.

3 Q Okay. Do you see that individual in court today?

4 A Yes.

5 Q And could you please point that person out and identify
6 an article of clothing he or she is wearing?

7 A He's wearing a button-up dark blue shirt.

8 MS. GOODMAN: Okay. And let the record reflect the
9 identification of the defendant.

10 THE COURT: It will.

11 BY MS. GOODMAN:

12 Q All right. And you said you conducted an interview with
13 him, correct?

14 A Yes.

15 Q Okay. Now, after all of that is said and done, you actually
16 got the DNA results back after the -- after everything else?

17 A Yes.

18 Q Okay. And what were the DNA results from that red shirt?

19 A The DNA buccal swab that we obtained from Ted Donko
20 matched the DNA that was swabbed from the red t-shirt.

21 Q Okay. Which further confirms him as the shooting
22 suspect?

23 A Yes.

24 Q All right.

25 MS. GOODMAN: I pass the witness, Your Honor.

1 THE COURT: Cross?

2 MR. HAUSER: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MS. GOODMAN:

5 Q Good afternoon, Detective.

6 A Good afternoon, sir.

7 Q You've got to bear with me, my voice is going a bit.

8 A It's all right.

9 Q Let's start with Mr. Woods. You did interview Mr. Woods
10 on October 1st, right?

11 A Yes.

12 Q Why is it important to interview someone right away?

13 A When we're on scene there, it's just one of the preliminary
14 things we do immediately to interview them so we can obtain fresh
15 information.

16 Q You want to get it while the information's still fresh in
17 someone's mind?

18 A Correct.

19 Q And this was immediately after the shooting, obviously?

20 A Yes.

21 Q All right.

22 A About an hour and a half.

23 Q And you want to be able to put out a description of the
24 suspects that haven't been found?

25 A Correct.

1 Q And during that interview, he gave you a pretty specific
2 description of the suspects, right?

3 A Correct.

4 Q He specifically said it was two Mexicans?

5 A No. I don't believe --

6 Q He didn't say the word Mexican?

7 A I can't recall if he said Mexican or Hispanic. But -- I can't
8 recall from --

9 Q If I showed you his statement, would you remember?

10 A Yeah. Yes.

11 MR. HAUSER: Judge, may I approach?

12 THE COURT: Of course.

13 BY MR. HAUSER:

14 Q I'll show it to you, you can read through it. All right.

15 So, Detective, I'm showing you Mr. Woods' voluntary
16 statement, right?

17 A Yes.

18 Q All right. So that's the statement you took right after the
19 shooting?

20 A Yes.

21 Q All right. Go ahead and read we'll say the top half of
22 page 3, and then just look up at me when you're done.

23 A That's in front of 56 Linn, yep.

24 Q Oh, you don't have to read it out loud, sorry.

25 A Oh, I apologize. [Witness reads document.]

1 I'm done.

2 MR. HAUSER: May I approach, Judge?

3 THE COURT: Yes.

4 BY MR. HAUSER:

5 Q Did that refresh your memory as to how, exactly, he
6 described the suspects on that day?

7 A Yes.

8 Q All right. And he did use the word Mexican?

9 A Yeah. So then he used Hispanic afterwards.

10 Q Okay. So he used both Mexican and Hispanic?

11 A Yes.

12 Q Okay. He also told you that they had no facial hair?

13 A Yes.

14 Q He told you they had no tattoos?

15 A Yes.

16 Q He specifically said that the shooter, the one wearing the
17 red shirt, was bald?

18 A Can't recall if it was bald or nearly bald, but --

19 Q Would you remember if I showed you?

20 A Yes.

21 Q All right.

22 MR. HAUSER: May I approach again, Judge.

23 THE COURT: Yes. Feel free to move freely.

24 MR. HAUSER: Thank you. I appreciate it.

25 BY MR. HAUSER:

1 Q All right. Detective, this is the same statement we just
2 went over. Looking at page 4 here. Go ahead and read that, look
3 up at me when you're done. You can read silently.

4 A [Witness complies.] I'm done.

5 Q All set?

6 A Yep.

7 Q So he did specifically described the shooter as bald?

8 A Yes.

9 Q And that's the shooter who's wearing the red shirt, right?

10 A Yes.

11 Q Okay.

12 MR. HAUSER: Judge, I'm going to retrieve that, if that's
13 okay.

14 THE COURT: Okay.

15 BY MR. HAUSER:

16 Q I appreciate that, Detective. Thank you.

17 A No problem.

18 Q That's what happens when I don't staple it.

19 A That's all right.

20 Q So, detective, I think you covered this with Ms. Goodman.
21 You're in charge of the entire investigation?

22 A Yes.

23 Q So whatever happens in this investigation comes back to
24 you?

25 A Yes.

1 Q It's not like they would keep information over here and not
2 show it to you?

3 A Correct.

4 Q So you saw what you needed to see in this case to come
5 to your conclusions, right?

6 A Yes.

7 Q Okay. Now, in this case, you actually did seize
8 Mr. Donko's cell phone, right, when he got arrested?

9 A Yes.

10 Q You sent that off for investigation?

11 A We conducted a search warrant on it.

12 Q Right. To the best of your knowledge, nothing came back
13 that tied Mr. Donko to the shooting based on that cell phone record,
14 right?

15 A No. It was a new cell phone that was purchased or -- after
16 the shooting had occurred.

17 Q Got it. Okay.

18 Let's talk about the interviews you conducted with the
19 victims. You spoke a little bit about speaking to them in the
20 hospital, right?

21 A Correct.

22 Q And that was Mr. Espinoza and Mr. Sanchez?

23 A Yes.

24 Q Neither of them could give you a description of the
25 shooter?

1 A Can't recall if they gave a description or not. I don't recall
2 if it was maybe something as small as wearing a red shirt or just
3 skin tone. I just can't recall.

4 Q If I showed you your report?

5 A Yes.

6 Q All right.

7 MR. HAUSER: Approach, Judge?

8 THE COURT: Yes.

9 MR. HAUSER: I said you said it was cool, but I just want
10 to make sure.

11 THE COURT: Yeah, of course.

12 BY MR. HAUSER:

13 Q Detective, I'm showing you the Declaration of Arrest in
14 this case. This is the report you wrote, right?

15 A Yes.

16 Q All right. I'm just going to look ahead here, page 3. Why
17 don't you go ahead and review those two paragraphs. Same kind
18 of deal, look up at me when you're done.

19 A [Witness complies.] I did.

20 Q So neither of them could give you a description of the
21 suspect?

22 A No, they did not.

23 Q All right.

24 MR. HAUSER: Approach to retrieve.

25 Q Thank you, Detective.

1 A Thank you.

2 Q In fact, you only spoke to one other person who's actually
3 able to give a description in this case; is that right?

4 A Yes, DeAndre Woods.

5 Q How about Edgar Miller?

6 A I can't recall if Edgar Miller gave a description or not. I
7 can't recall.

8 Q You don't recall if Mr. Miller described the suspects as
9 Hispanic?

10 A I can't recall.

11 Q All right. Would you remember if I showed you the
12 interview?

13 A Yes.

14 Q All right.

15 MR. LEXIS: Judge, can we approach?

16 THE COURT: Yep.

17 [Bench conference transcribed as follows.]

18 MR. LEXIS: Edgar Miller has not testified. It's hearsay.

19 MR. HAUSER: It's for further investigation, Judge. Not
20 for truth.

21 THE COURT: And I [indiscernible] hear that's for the truth.
22 So the --

23 MS. GOODMAN: It's absolutely for the truth.

24 MR. HAUSER: Mr. Woods, it's definition [indiscernible].

25 THE COURT: But Mr. Woods testified, right? So you can

1 do prior consistent or prior inconsistent.

2 MR. HAUSER: Right.

3 THE COURT: But since this guy never testified and he
4 hasn't [indiscernible] anything [indiscernible].

5 MR. HAUSER: Oh, I understand. It's not impeachment.
6 I'm saying that the hearsay's not offered for the truth. It's --

7 MS. GOODMAN: It's the opposite.

8 MR. HAUSER: His subsequent investigation that he was
9 then told by both the eyewitnesses it was a Hispanic male and
10 where the investigation went from there.

11 THE COURT: So -- all right, so this guy -- what's
12 [indiscernible]?

13 MR. HAUSER: Miller.

14 THE COURT: This is Miller.

15 MR. HAUSER: Yeah.

16 THE COURT: So he believes he doesn't -- he talked to
17 Miller and Miller said --

18 MR. HAUSER: Hispanic. That's all he got. He doesn't get
19 anything else out of him, to the best of my recollection.

20 THE COURT: Okay. So you never -- I mean, it's still
21 hearsay. I think you can say, from what the other people say, you
22 were told it was two Hispanic men, and then you did what? He
23 hasn't had time to look at it, right? So --

24 MR. HAUSER: Right.

25 THE COURT: -- I think if he --

1 MR. HAUSER: It's [indiscernible]. Yeah.

2 THE COURT: Right. So it's [indiscernible] to hearsay, but

3 [indiscernible] same thing. So.

4 MR. HAUSER: Cool.

5 MR. LEXIS: Judge, I would move to strike that last

6 question.

7 THE COURT: All right.

8 MR. HAUSER: All right. I'll narrow it down.

9 THE COURT: Okay.

10 [End of bench conference.]

11 THE COURT: So the last question and answer will be

12 stricken from the record. So you are to disregard the last question

13 and answer by the detective.

14 Next question.

15 BY MR. HAUSER:

16 Q Suffice it to say, Detective, no eyewitness to the shooting

17 described the shooter as white?

18 A That's correct.

19 Q Okay. All right. Detective, I'm showing you what's been

20 admitted as State's 7. All right. You were looking [indiscernible],

21 right?

22 A Yes.

23 Q Do you see an address marked towards the top of that

24 screen?

25 A Yes.

1 Q 299 North Linn?

2 A Yes.

3 Q Whose address is that?

4 A At that time, when the shooting occurred, Ted Donko was
5 residing there.

6 Q That's Ted Donko's address at the time?

7 A At the time, yes.

8 Q Right. I appreciate that, Detective.

9 MR. HAUSER: Brief indulgence, Judge.

10 THE COURT: Yep.

11 [Pause in proceedings.]

12 BY MR. HAUSER:

13 Q Detective, you remember when the 911 call was made in
14 this case?

15 A What time?

16 Q Yeah.

17 A I want to say it was possibly 12:14.

18 Q 12:14?

19 A Yeah.

20 Q If I tell you that's right, would you believe me?

21 A Yes.

22 Q All right. So 12:14 the 911 call was made?

23 A Yes.

24 Q All right. And I want to finish by talking to you about the
25 lineup that you introduced. That was down here. All right. So this

1 is State's 203, right? This is the lineup that you put together?

2 A Yes.

3 Q All right. That's the lineup you showed to Mr. Woods as

4 well, right?

5 A Yes.

6 Q And you showed that to Mr. Woods on the 9th, correct?

7 A Yes, I believe so.

8 Q Showing you State's 202; see the date on the top up

9 there?

10 A Yes.

11 Q All right. So it's on the 9th?

12 A Yes.

13 Q Cool. Back to State's 203. Now, when you look at that

14 lineup, obviously, there's no Hispanic males in that lineup, right?

15 A That's correct.

16 Q There are no bald individuals in that lineup, right?

17 A That's correct.

18 Q There are, however, gentlemen with facial hair in that

19 lineup?

20 A That's correct.

21 Q Now, in this lineup, Mr. Donko has no facial hair?

22 A I'd say he has facial hair.

23 Q I guess that little tuft under the chin, right?

24 A And on the sides and -- there's, like, some scruff.

25 Q Yeah. So 5:00 shadow kind of thing?

1 A Little more than that.

2 Q Maybe a little longer? Okay. You wouldn't call it a beard,

3 right?

4 A No.

5 Q And certainly not compared to Number 6, right?

6 A No.

7 Q Or Number 4?

8 A No.

9 Q Or Number 1?

10 A The sides are kind of like Number 1.

11 Q But those guys all clearly have facial hair, right?

12 A Yes.

13 MR. HAUSER: Brief indulgence, Judge.

14 THE COURT: Sure.

15 MR. HAUSER: Thank you, Judge.

16 I have no further questions at this time. Thank you,

17 Detective.

18 THE WITNESS: Thanks.

19 THE COURT: Redirect.

20 MS. GOODMAN: Just briefly, Your Honor.

21 **REDIRECT EXAMINATION**

22 BY MS. GOODMAN:

23 Q All right, Detective. Both of the victims identified the

24 passenger as the one who got out and shot?

25 A Yes.

1 Q Both victims said Shorty, they said something about
2 Shorty, and he shot?

3 A Yes.

4 Q Okay. The eyewitness to the shooting says that he has a
5 red shirt?

6 A Yes.

7 Q Okay. Not only did that eyewitness identify Ted Donko,
8 but identifies the red shirt, correct?

9 A Yes.

10 Q Okay. I'm pointing to the Toyota Corolla found up the
11 street, the inside of the Toyota Corolla, there's a license plate with
12 Ted Donko's fingerprints in it?

13 A Yes.

14 Q Just a little bit further, there's a surveillance still that
15 shows a man wearing a white shirt towards the direction of Big
16 Sea?

17 A Wearing a red shirt.

18 Q At the video surveillance that you recovered from 5675
19 Big Sea Street, shows a male with a red shirt that day, on
20 October 1st?

21 A Yes.

22 Q Okay. And that's headed the direction to the Big Sea
23 street that's right here?

24 A Yes.

25 Q Same direction of where the red shirt was found?

1 A Yes.

2 Q The red shirt containing Ted Donko's DNA?

3 A Yes.

4 Q Right up in the same path, that's an easy out to get to 299
5 North Linn?

6 A Yes.

7 Q Okay.

8 MS. GOODMAN: No further questions, Your Honor.

9 THE COURT: Anything based on that, Mr. Hauser?

10 MR. HAUSER: A moment of indulgence, Your Honor.

11 THE COURT: Sure.

12 MR. HAUSER: No, thank you, Judge. I'm all set.

13 THE COURT: Any questions from the ladies and
14 gentlemen of the jury? Yes, sir.

15 [Bench conference transcribed as follows.]

16 MR. HAUSER: Was that the only one?

17 [End of bench conference.]

18 THE COURT: All right. Detective, was a weapon ever
19 recovered?

20 THE WITNESS: No.

21 THE COURT: Any follow-up by the State?

22 **FURTHER EXAMINATION**

23 BY MS. GOODMAN:

24 Q Detective, are you surprised by that?

25 A No.

1 Q Why?

2 A The timeframe from when we -- the shooting occurred
3 and we took Ted Donko into custody was about a month and a half.

4 Q Okay.

5 A That's -- and then you're not going to leave a firearm
6 inside of a vehicle or -- you'll try to dispose of it as soon as possible
7 after the crime has been committed.

8 Q Thank you.

9 MR. HAUSER: Objection. Speculation.

10 MS. GOODMAN: No further questions, Your Honor.

11 THE COURT: Sustained.

12 MS. GOODMAN: Thank you, Your Honor.

13 THE COURT: Defense, follow-up in regards to that specific
14 question?

15 MR. HAUSER: No, Judge.

16 THE COURT: All right. Any other questions from the jury?
17 Yes, sir.

18 [Bench conference transcribed as follows.]

19 MR. HAUSER: I'm okay with that.

20 [End of bench conference.]

21 THE COURT: Detective, did investigators view an
22 enhanced or zoomed-in version of the video?

23 THE WITNESS: The surveillance video from the address?
24 I mean, we did try to zoom in on it, but it wasn't enhanced. It was
25 fairly poor quality, but you can still see that there was a very similar

1 description to the shooting suspect.

2 THE COURT: Can everyone -- did everyone hear that
3 answer? All right.

4 Follow-up?

5 MS. GOODMAN: Yes, Your Honor.

6 Your Honor, may I approach?

7 THE COURT: Yes.

8 MS. GOODMAN: And these actually are not marked.

9 THE COURT: Okay.

10 MS. GOODMAN: Can we mark these real quick? I
11 apologize.

12 [Pause in proceedings.]

13 MS. GOODMAN: And, Your Honor, may I approach?

14 THE COURT: Yes.

15 **ADDITIONAL EXAMINATION**

16 BY MS. GOODMAN:

17 Q Can you look through those, that stack of photos,
18 Detective?

19 A [Witness complies.]

20 Q And do you recognize those?

21 A Yes.

22 Q What do you recognize them to be?

23 A The still photos from the video surveillance.

24 Q Okay. And are they, in fact, zoomed up?

25 A Yes.

1 Q Okay.

2 MS. GOODMAN: And, Your Honor --

3 Q Do these truly, fairly, and accurately depict the video
4 surveillance?

5 MS. GOODMAN: Again, Your Honor, I move for a State's
6 admission as 235 through 238.

7 MR. HAUSER: No objection.

8 THE COURT: All right. Those will be admitted.

9 [State's Exhibit Nos. 235 through 238 admitted.]

10 MS. GOODMAN: Thank you, Your Honor.

11 No further questions at this point.

12 THE COURT: All right.

13 Yes?

14 MR. HAUSER: Just one brief follow-up.

15 THE COURT: Okay.

16 **ADDITIONAL EXAMINATION**

17 BY MR. HAUSER:

18 Q Detective, I think it's fair to say you -- good lord, you
19 yourself would describe those as poor quality? The video, the
20 stills?

21 A Yeah, they -- we can't get a -- it's not like a driver's license
22 photo.

23 Q Right. It's not like *CSI*, where you can zoom all the way in
24 and get the clear ID.

25 A Right. It's fairly pixilated.

1 Q I appreciate it.
2 MR. HAUSER: Thank you very much, Judge.
3 THE COURT: All right. Anything else, State?
4 MS. GOODMAN: No, Your Honor.
5 THE COURT: Any other question from the jurors? Okay.
6 [Bench conference transcribed as follows.]
7 MR. LEXIS: Obviously, I say that can't be asked.
8 MR. HAUSER: I think that would be -- yeah, agree.
9 MR. SHAYGAN-FATEMI: I like that. I'm okay with that.
10 MR. LEXIS: Can you explain [indiscernible].
11 MR. SHAYGAN-FATEMI: Yeah, I like that.
12 THE COURT: All ready? Oh, no.
13 MR. HAUSER: No, there was one.
14 THE COURT: All right.
15 MR. HAUSER: The one on the bottom now. And I think
16 if -- I don't think you need an explanation.
17 THE COURT: Okay.
18 [End of bench conference.]
19 THE COURT: All right. Detective, were you able to find
20 traffic or any other cameras with the car?
21 THE WITNESS: There was an AutoZone video
22 surveillance. I could point it on the map. However, that video was
23 also poor quality. There is a vehicle that passes by that's a very
24 similar description, but, again, you can't depict that it would be the
25 exact vehicle.

1 THE COURT: Okay. Can you explain how lineup photos
2 are -- were selected? And why did none match the original
3 description provided by Mr. Woods?

4 THE WITNESS: So we match the other five photos based
5 off the main individual, the main suspect. The reason why the
6 other photos weren't based off of DeAndre Woods' suspect is
7 because if we had five Hispanic male adults and then one male
8 adult, that male adult would stick out. So we have to pick the other
9 photos to similarly match the suspect photo. If that -- I can
10 elaborate if anybody has some questions.

11 THE COURT: Well, let's see if there's any follow-up
12 questions.

13 **ADDITIONAL EXAMINATION**

14 BY MS. GOODMAN:

15 Q And go ahead, you can elaborate if you'd like on why --
16 what photos you chose to pick.

17 A So they were based off height, weight, skin tone, hair
18 length, similar facial hair. So it's -- the program is set up to where
19 the suspects' descriptions are put into the system and then all these
20 other people are pulled up based off the same descriptions of the
21 suspect.

22 Q Okay. And the -- and Ted Donko matches a 5-11, 200
23 pound -- that's what his specs are?

24 A Yes.

25 Q Okay. And -- which is -- matches DeAndre's suspect, 5-11,

1 about 200, 200-plus pounds.

2 A Yes.

3 Q Thank you.

4 MR. HAUSER: No further questions, Your Honor.

5 THE COURT: Defense.

6 MR. HAUSER: Yes, Your Honor.

7 **ADDITIONAL EXAMINATION**

8 BY MR. HAUSER:

9 Q Just to be clear, Detective, when you say you were picking
10 them to match the description, that's the description of Ted Donko,
11 not the description you received from the scene?

12 A Correct. Description of Ted Donko being the suspect in
13 that photo.

14 Q Thank you very much.

15 MS. GOODMAN: Nothing further, Your Honor. Thank
16 you.

17 THE COURT: Anything else from the jury?

18 All right. Detective, you are excused from your subpoena
19 and free to leave. Please do not share you testimony with anyone
20 else involved in the case.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: Thank you. Have a nice day.

23 State?

24 MR. LEXIS: Could we approach?

25 THE COURT: Yep.

1 [Bench conference transcribed as follows.]
2 MR. LEXIS: We're going to rest now.
3 [End of bench conference.]
4 MR. LEXIS: With the admission of all our exhibits, the
5 State rests.
6 THE COURT: Okay. The State rests their case in chief.
7 Defense?
8 MR. HAUSER: Brief indulgence, Judge.
9 THE COURT: Sure.
10 [Pause in proceedings.]
11 MR. HAUSER: The defense does have a witness, Your
12 Honor.
13 THE COURT: Okay.
14 MR. HAUSER: Defense calls Ted Donko.
15 THE COURT: All right.
16 **TED MICHAEL DONKO,**
17 [having been called as a witness and first duly sworn, testified as
18 follows:]
19 THE CLERK: Thank you. You may be seated. Please state
20 your complete name, spelling both your first and last name for the
21 record.
22 THE WITNESS: Ted Michael Donko, T-E-D, D-O-N-K-O.
23 THE CLERK: Thank you.
24 ///
25 ///

DIRECT EXAMINATION

BY MR. HAUSER:

Q Mr. Donko, how old are you?

A 30 years old.

Q Where do you live?

A 299 North Linn.

Q Is that close to 56 North Linn?

A Eight houses down.

Q How long have you lived there?

A Four years.

Q How long you been in Las Vegas?

A Since 1999.

Q Did you go to school here?

A Yes, I did.

Q Where?

A I went to Valley, I went to Chaparral, Mohave, and attended UNLV for three and a half months.

Q Ted, in the interest of fairness, I want to ask this jury right now, you ever been in trouble before?

A Yes, I have.

Q What do you mean?

A I have two prior convictions for attempted grand larceny and attempt burglary.

Q So you're a convicted felon?

A Yes, I am.

1 Q Honesty is always the best policy. I appreciate that.
2 Ted, we've heard a lot about October 1st in this case. On
3 October 1st, you're accused of shooting at three people and hitting
4 two of them. Did you shoot anybody?
5 A No.
6 Q Do you own a gun?
7 A No.
8 Q Have you ever tried to shoot anybody?
9 A No.
10 Q Do you know where you were on October 1st?
11 A Yes. I was at home, and I went to Sonic, which is across
12 the street from the AutoZone.
13 Q When you say across the street from the AutoZone, give
14 me, like, some cross-streets there.
15 A You -- as you go down Linn, and then where they said the
16 car had made a right turn, across -- right across from Charleston is
17 where Sonic is.
18 Q Let me show you a map and we can try to identify it,
19 okay?
20 A No problem.
21 Q I'm going to show you State's Exhibit 7.
22 A Okay.
23 Q All right. So you're looking at Charleston and Linn there,
24 right?
25 A Yes.

1 Q That's here at the bottom of the photo?
2 A Yes.
3 Q So the Sonic is maybe even where this --
4 A It's right here.
5 Q Want to draw it on there for me?
6 A Yes. It's about right there somewhere.
7 Q Okay. So very, very close to Charleston and Linn?
8 A Yes.
9 Q Okay. I appreciate that.
10 Ted, have you ever met DeAndre Woods before?
11 A Yes, I have.
12 Q Where?
13 A From the neighborhood. From the neighborhood we
14 hung out, smoked pot together, stuff like that.
15 Q All right. So you've seen him before?
16 A Absolutely, yes.
17 Q Do you know how long ago you first met him?
18 A I met him probably back in 2017.
19 Q All right.
20 A That's before him and his girl broke up, when he got
21 kicked out of the house.
22 Q Okay. Ted, tell me about what your house looks like;
23 what's the front yard look like?
24 A I have five cars in front of it that I work on. I'm a
25 mechanic, do side jobs for a mechanic.

1 Q Okay.

2 A It's -- I have my front driveway, the garage -- there is no
3 garage. It's in the front, the back gate's on the right side. There's a
4 front dirt lot. There's a white gate. One side bedroom window is
5 by the front door. There's a two-door garage.

6 Q Tell me about your neighborhood a little bit; what's it like?

7 A It's -- I just -- we moved out of there. It's been a rough --
8 there's a lot of Hispanic on Hispanic gang, violence going on. A lot
9 of shootings been going on over there.

10 Q Would you describe it as a safe area?

11 A No.

12 Q How about a clean area?

13 A No.

14 Q Not to be offensive, would you describe it as a poor
15 neighborhood?

16 A I wouldn't say it's poor. There's -- anywhere you go,
17 there's bad fruit, you know?

18 Q Of course.

19 A But it calmed down for a while over there, and then it
20 started, it got -- and then that situation happened.

21 Q Is it the kind of neighborhood where people occasionally
22 have street names?

23 A Yes.

24 Q Like Shorty?

25 A Yes. I only know of -- I didn't really know Shorty at all. I

1 just heard that he had got jumped by a black male. And -- because
2 everybody -- there's a few people there that hang out. DeAndre
3 Woods, I just bought pot from him.

4 Q Okay. And the reason I ask that is when you hear
5 someone referred to by a nickname, that's not surprising to you,
6 right?

7 A No, sir.

8 Q In that neighborhood, some people just go by nicknames?

9 A You could say that, yes.

10 Q All right. Would you say that?

11 A Yes.

12 Q All right.

13 MR. HAUSER: Brief indulgence, Judge.

14 [Pause in proceedings.]

15 Q Ted, I want to be very clear: Do you have any problems
16 with Fernando Espinoza?

17 A I've never seen him in my life. I --

18 Q How about Jonathan?

19 A I've seen Jonathan around.

20 Q Do you have any problems with Jonathan Sanchez?

21 A No.

22 Q Or DeAndre Woods?

23 A No.

24 Q Would you ever shoot at those individuals?

25 A I would never shoot at anyone, Your Honor.

1 Q I appreciate it, Ted. Thank you very much.
2 MR. HAUSER: I have no further questions of this witness.
3 THE COURT: Cross.
4 MR. LEXIS: Yes.
5 THE WITNESS: Your Honor, the attorney. Sorry.
6 MR. HAUSER: It's okay, bud.

7 **CROSS-EXAMINATION**

8 BY MR. LEXIS:

9 Q Sir, you gave a statement to the police after you were
10 arrested, correct?

11 A Yes, sir.

12 Q It was a long interview, correct?

13 A Yes, sir.

14 Q Okay. You just got up there and told this jury, with your
15 defense attorney, that, Oh, yeah, it's common to know people by
16 the name of Shorty, right?

17 A Yes, sir.

18 Q Okay. Do you remember when the detective first asked
19 you if you knew a man by the name of Shorty, you said no, correct?

20 A I didn't say no, I said I bought methamphetamine off of
21 him.

22 Q It's yes or no.

23 A I didn't say I didn't know him, no.

24 Q Okay. So when the detective first asked you if you knew a
25 man named Shorty, you said no, right?

1 A No, that's not right.

2 Q Okay. And then, when pressed, you did admit to knowing

3 a man named Shorty, correct?

4 A I admitted to it on the first -- the first time he asked me.

5 Q Okay.

6 A Also, I have a statement, if you'd like to see, where I

7 admitted knowing --

8 Q Sir, that's -- I'm asking the questions. Okay?

9 A Okay, I'm sorry. Yes, sir.

10 Q Now, you gave this full interview, you said that you know

11 the victim in this case, but in no point in time in that interview did

12 you say you knew DeAndre Woods, correct? Yes or no.

13 A I said I didn't --

14 Q Yes or no.

15 A Yes.

16 Q You did say that? Okay.

17 A Yes, I did tell him.

18 Q Now, as you stated, sir, you reside near this area, correct?

19 Right?

20 A Yes.

21 Q In this whole general vicinity, where the shooting

22 occurred, where the car was located, where the red shirt is, and

23 where your house -- it's all in the same area, correct?

24 A Yes, it is.

25 Q Okay. So fair to say you know this area well, correct?

1 A To a certain point, yes.

2 Q Okay. You remember telling the detective that your
3 girlfriend picked you up around that day, around 11:00 or 12:00?

4 A Yes.

5 Q Okay. Do you remember saying that you were over by her
6 house, across town at the time of the shooting?

7 A No. I stated I went to her house later on that day.

8 Q Okay. So this license plate that's in the vehicle right here,
9 correct?

10 A Which license plate?

11 Q The license plate that we've seen in this case, sir.

12 A Yes.

13 Q Okay. Do you normally drive around with no license plate
14 on your car?

15 A I don't have a car. I don't have a license.

16 Q Okay. You normally take license plates on and off?

17 A Not really, no. Unless it's for my mom.

18 Q Okay. But your print's on that license plate in that car,
19 correct?

20 A Yes.

21 Q Okay. And it's your testimony you did not park that car at
22 that address?

23 A No.

24 Q Just a big coincidence how there's no license plate on it
25 and the only viable print in that car comes to you on the plate,

1 correct?

2 MR. HAUSER: Objection. Badgering the witness.

3 THE WITNESS: I find it's kind of --

4 THE COURT: Hold on just a second.

5 I'm sorry, what was the objection?

6 MR. HAUSER: Badgering the witness.

7 THE COURT: Overruled.

8 Go ahead.

9 BY MR. LEXIS:

10 Q Go ahead.

11 A Can I say something?

12 THE COURT: Can you re-ask the question?

13 MR. LEXIS: Yes.

14 BY MR. LEXIS:

15 Q So the only viable print on that vehicle you said that you
16 weren't in comes back to the license plate, correct?

17 A In the statement, it says that --

18 Q Yes or no. I'm asking yes-or-no questions, sir. Yes or no?

19 A Yes or no what?

20 Q I'll move on.

21 Sir, the detectives pressed you, correct, and told you that
22 they found fingerprints in the vehicle, correct?

23 A Yes.

24 Q Okay. You actually admitted to being in a four-door
25 sedan, older model, beat-up condition, the night prior to this

1 shooting, correct? Yes or no.

2 A Yes.

3 Q Okay. In fact, when confronted with evidence from the
4 detectives, you admit to being the passenger in that vehicle,
5 correct?

6 A Yes. Again, I don't have a license in --

7 Q Yes or no?

8 A Yes.

9 MR. SHAYGAN-FATEMI: Your Honor, is it necessary for
10 the State to yell at him?

11 THE COURT: So I just need you to answer just yes or no.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: And then your --

14 THE WITNESS: I apologize for it, ma'am.

15 THE COURT: It's all right.

16 And then your attorneys will have an opportunity to ask
17 you questions and you can --

18 THE WITNESS: Okay.

19 THE COURT: -- say more than yes or no if it calls for it.

20 THE WITNESS: Okay.

21 THE COURT: But when the State's asking you, if it's just
22 yes or no, just say yes or no. Okay?

23 THE WITNESS: Okay. I apologize, sir.

24 THE COURT: That's all right.

25 BY MR. LEXIS:

1 Q Do you normally discard clothing throughout the
2 neighborhood, sir? Yes or no.

3 A No.

4 Q But roughly minutes after this shooting, your -- a red shirt
5 that you obviously wore is found a couple blocks from your house,
6 correct?

7 A That's what I've been told, yes.

8 Q A couple of blocks from the shooting too, correct?

9 A Yes.

10 Q When were you driving around, sir, in this older -- in your
11 words, a four-door sedan, older model, beat-up condition?

12 A It was an Audi. Four-door Audi. And it was about 10:00 at
13 night when my buddy took me -- Patrick -- he took me to the
14 dispensary.

15 Q Okay. Did you mention Audi to the detective? Yes or no.

16 A No, at that time, I didn't know exactly what kind of car it
17 was, but I asked him on the phone. I called him from jail.

18 Q Okay. So you brought that up -- this is some new
19 evidence that you're bringing forward, that it's an Audi, right?

20 A I wouldn't really say it's new.

21 Q Okay.

22 A I mean, I asked him when I first got -- came to jail.

23 Q But you described it to the detective as a beat-up
24 condition four-door sedan, old model, correct?

25 A Yes.

1 Q Okay. And what time were you driving that vehicle
2 around, sir?

3 A I wasn't driving the vehicle. I was the passenger. And it
4 was about 10:00 p.m.

5 Q 10:00 p.m. But it wasn't the vehicle that we saw earlier?

6 A No, it was not.

7 Q This one, it just happens to be a different vehicle that has
8 your prints on the license plate, correct?

9 A Yes.

10 Q Okay.

11 A Your Honor, may I say something?

12 THE COURT: No. You have to wait for a question.

13 BY MR. LEXIS:

14 Q The spent -- unspent cartridge casing that matches the
15 casings at the crime scene, as you've heard, in evidence, sir, that's
16 found in the vehicle with your print on it; just a coincidence,
17 correct?

18 MR. SHAYGAN-FATEMI: Your Honor, that calls for
19 speculation.

20 BY MR. LEXIS:

21 Q You have no idea it's in there, correct?

22 A I -- I believe my fingerprint was on the license plate
23 wedged between the seat, not on the vehicle. But yes, there's a
24 shell casing in that car.

25 Q But today you're telling us that at the time of the interview

1 with the detective, it was a four-door sedan, light brown, when
2 confronted with evidence. Basically, you described that car, the
3 description of it, a four-door sedan, beat-up condition. But today,
4 all of a sudden, it switches to an Audi, correct?

5 MR. HAUSER: Objection. Compound.

6 THE WITNESS: It was --

7 THE COURT: Hold on. You have to wait till I rule on the
8 objections.

9 THE WITNESS: Okay.

10 THE COURT: So no, I don't believe it was compound.
11 Overruled.

12 Go ahead.

13 THE WITNESS: No. He -- I asked him what kind of car he
14 had. He told me it was an Audi and it was a beat-up older car,
15 about 2002.

16 BY MR. LEXIS:

17 Q Okay. Sir, this is my question --

18 A Four-door.

19 Q This is my question, sir: You could have described any
20 car to the detectives that day, correct?

21 A Yes.

22 Q Okay. But when the detective presses you and says, Sir,
23 we have your fingerprints in a car, your response wasn't, It was an
24 Audi, correct? Yes or no.

25 A No, it was not.

1 Q Okay. You didn't say it was a truck, an SUV, correct?
2 A No, because it wasn't.
3 Q Okay. You didn't give a particular -- saying it was a newer
4 model, you didn't say any of that, correct?
5 A No, because that would be lying if I did.
6 Q Okay. You, not the detective, you described it as a
7 four-door sedan, older model, correct?
8 A Yes, sir.
9 Q In which you were the passenger, correct?
10 A Yes, sir. But he never --
11 Q Nothing further.
12 A -- told me he had --
13 Q Nothing further. Thank you.
14 THE COURT: Mr. Hauser?

15 **REDIRECT EXAMINATION**

16 BY MR. HAUSER:

17 Q Mr. Donko, you could have described any car, an SUV, a
18 truck, a Maserati, any car to the cops.
19 A Yes.
20 Q Why didn't you?
21 A Because I was telling the honest truth about what I was
22 doing the night before. And for the record, he never told me they
23 had a fingerprint inside of the car at that moment.
24 Q Mr. Lexis asked you a lot of questions about why you
25 didn't give this additional information. Were you asking the

1 questions in this interview?

2 A No.

3 Q Did the ask you to just say everything you wanted to say?

4 A No.

5 Q Were you trying to do the best you could to answer the
6 questions the detective was asking you?

7 A I was very cooperative, yes.

8 Q And were you -- did you cooperate with him?

9 A Absolutely.

10 Q Take a look back here at Exhibit 7. All these pins on here,
11 your house, the shirt, the car, the shooting; how far do you think it
12 is between your house and the shooting? I know you said eight
13 houses, but give me a distance.

14 A Three-and-a-half-minute walk, if that.

15 Q So all of this is very close together, right?

16 A Yes.

17 Q And this is your neighborhood?

18 A Yes.

19 Q How do you do laundry at your house?

20 A My mom kicked me out for a while, so I had to storage all
21 my clothes in a broke-down car that I had in front of my house.

22 Q Did you occasionally lose some of those clothes?

23 A People came through and rummaged through the car.

24 Q Just kind of one of the hazards of being homeless?

25 A I guess it was not really having nowhere to take it. So I

1 moved in with my girlfriend.

2 Q Ted, we heard some information earlier about the bullets
3 that are in the car. Your fingerprint's on those bullets?

4 A No.

5 Q Would you like for them to have been tested?

6 A Yes.

7 Q How long have you had your tattoos?

8 A Since 2011.

9 Q Roll up your sleeves for me.

10 A [Witness complies.]

11 Q This is Defense Exhibit D; those are your tattoos, right?

12 A Yes.

13 Q On your left arm there?

14 A That's the right arm.

15 Q That is the right arm. I'm bad at directions, man. I?

16 A It's all right.

17 Q I guess that's why I went to law school.

18 All right. How about Exhibit C; this one, then, is your left
19 arm, right?

20 A Yes.

21 Q All right. You've had these tattoos for a long time?

22 A Yes. As you can see, the two calendars.

23 Q What do the calendars say?

24 A Those are times that special somebody died in my family.

25 And 12 and 14 is from the time I went to prison for the grand

1 larceny.

2 Q I see an 11 on there too, right?

3 A Yes.

4 Q Did you get that in 2011?

5 A Yes.

6 MR. HAUSER: Brief indulgence, Judge.

7 Q Ted, were you honest with the detective who talked to
8 you?

9 A Yes.

10 Q You being honest with me right now?

11 A Yes, sir.

12 Q Were you honest with Mr. Lexis when he just asked you a
13 lot of questions?

14 A Yes, sir.

15 Q Did you shoot anybody?

16 A No.

17 MR. HAUSER: I have nothing further at this time.

18 THE COURT: Okay. Redirect -- or, excuse me, recross.

19 **RECROSS-EXAMINATION**

20 BY MR. LEXIS:

21 Q Okay. Sir, you have offered no reason on why your red
22 shirt is found in the middle of the road, correct?

23 A Sir, I just stated to you I had all my clothes in the car. It
24 got ransacked. So a lot of my clothes was missing.

25 Q Okay. When was your car ransacked?

1 A Multiple times.

2 Q Oh, so multiple times your car was ransacked with that
3 red shirt, huh?

4 A Yes.

5 Q Okay. You couldn't find a date --

6 A More than that's been took.

7 Q -- or can't find a date?

8 A Pardon me?

9 Q When was that?

10 A I can't give you an exact date. My clothes was probably in
11 there for anywhere from three weeks to a month and a half.

12 Q Okay. And it just so happens it appears to be freshly
13 thrown on the side of the road minutes after the shooting on this
14 particular --

15 MR. HAUSER: Objection. Argumentative.

16 THE COURT: Sustained.

17 THE WITNESS: When my mom kicked me out, I just
18 took -- I grabbed the --

19 THE COURT: So when I sustain, you don't have to
20 answer.

21 THE WITNESS: Okay. I'm sorry, ma'am.

22 THE COURT: That's all right.

23 Next question.

24 BY MR. LEXIS:

25 Q So, again, sir, you've got no explanation on why that shirt

1 is sitting there on the side of the road?

2 MR. HAUSER: Objection. Asked and answered.

3 THE COURT: Sustained.

4 BY MR. LEXIS:

5 Q Is that your shirt, sir?

6 A I don't know if it's exactly my shirt. I own a few red shirts.

7 Q Okay. That 99 -- or the -- excuse me, not the 99.

8 The DNA evidence that came in [indiscernible], but you
9 don't recognize that as your shirt?

10 A If my DNA's on it, then it must have been one of the shirts
11 that was in the car, yes. But there was also another DNA on that
12 shirt.

13 Q Who said it was in the car?

14 A Pardon me?

15 Q Who said it was in the car?

16 A It was in my car. The broke down car in front of the
17 house.

18 Q Same car that you were driving where the license plate's
19 found?

20 A No. The car that's in front of my house where I storage
21 my clothes.

22 Q Okay.

23 MR. LEXIS: Nothing further, Judge.

24 THE COURT: Mr. Hauser.

25 MR. HAUSER: Judge, I'm all set. Thank you.

1 THE COURT: Okay. Ladies and gentlemen, any questions
2 from the jury? Okay.

3 Thank you so much, sir. You're free to go back to your
4 seat.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Hauser?

7 MR. HAUSER: Defense has no further witness. We'll rest,
8 Your Honor.

9 THE COURT: All right. State?

10 MR. LEXIS: State calls Detective Marin.

11 May we approach, Judge?

12 THE COURT: Yep.

13 [Bench conference transcribed as follows.]

14 MR. LEXIS: So these -- obviously, these times don't
15 match up on when the car and the -- his statements regarding the
16 car, the plates in the car. I've asked to call the owner of the car. It
17 was stolen, literally, the night before, and he knows it not to be
18 stolen until well after Defense claims to be. And this other car with
19 Patrick, this older model car.

20 MR. HAUSER: I don't think we opened the door that at all,
21 Judge. I don't think he said anything about I didn't steal a car, or it
22 was a stolen car, anything like that.

23 THE COURT: Okay. So --

24 MR. HAUSER: It's not going to rebut what was actually
25 said.

1 MR. LEXIS: He's claiming he was not in the car, his prints
2 are in the car, and that he was driving around with a --

3 MR. SHAYGAN-FATEMI: They're stretching, Judge.

4 THE COURT: What?

5 MR. SHAYGAN-FATEMI: They're stretching. It shouldn't
6 come in.

7 THE COURT: So can someone help me understand this?
8 Because I don't really know a lot about the stolen car or the
9 circumstances around it. So can someone help me out with that?

10 MR. LEXIS: The timeline is extremely important, because
11 this car was taken from the owner the night before. So the timeline
12 is extremely important, this car is -- to try to say that he had no idea
13 how this plate had been on this car, he's never seen that car, he's
14 never been in that car, that is absolutely highly relevant that the
15 owner of that car will say that he and -- he lost possession of that
16 car or noticed it was gone between basically the middle of the night
17 the night before.

18 MS. GOODMAN: So, basically, an argument, it's going
19 to -- the argument is that the defendant in an interview sua sponte
20 pretty much said, Oh, I was in this car at -- like, right before, you
21 know, before midnight I was in this older car, pretty much
22 described the car to the T to the detective. And the detective said,
23 That's impossible, because the car was stolen after midnight. And
24 then all of a sudden he started backtracking and be, like, Oh, well
25 no. Oh, no. So it's relevant to pretty much impeach the defendant

1 that he places himself in the vehicle with the detective.

2 And then also the detective says it's stolen, and then he
3 tries to backtrack his story. That's basically what the relevancy is.

4 MR. HAUSER: Here's the thing, Judge, it's a rebuttal
5 witness. If they wanted it in because it was relevant, they could
6 have litigated it before trial.

7 MS. GOODMAN: Well, no, that's not correct.

8 THE COURT: [Indiscernible].

9 MS. GOODMAN: Exactly.

10 THE COURT: Then what's the difference? Oh, he knows
11 the argument, right?

12 MR. HAUSER: Right. But the door has not been opened,
13 is what I'm saying.

14 THE COURT: So, I mean, I guess my thing is, is --

15 MS. GOODMAN: The problem that comes when
16 impeaching, we have to be able to impeach the defendant. And in
17 order for us to do so, we would have to call the detective. The
18 detective has to mention that the car's stolen. And before we
19 either -- see what I'm saying? So --

20 THE COURT: Yes.

21 MR. HAUSER: But it's not actually a contradiction.

22 THE COURT: Well, I guess I've been trying to
23 [indiscernible] vehicle that he had a bunch of cars that he works on
24 in front of his house. That idea is a little bit bothersome. And I
25 couldn't tell if that's where he was going with that or if it's --

1 MR. SHAYGAN-FATEMI: If he would have went there,
2 Your Honor would know. And he didn't.

3 THE COURT: But if I know during it, right? If I'm
4 wondering that the suggestion is -- because if you think about it, I
5 don't know all the ins and outs of this case, right, because I got it
6 from [indiscernible].

7 MR. HAUSER: Right.

8 THE COURT: So I'm almost in the shoes of them in
9 regards to [indiscernible]. So he's talking about he works on cars
10 all the time and that that's why it's confusing.

11 MR. SHAYGAN-FATEMI: And him saying that he works
12 on cars doesn't rise to a level of opening a door and bringing in the
13 detective and talking about --

14 THE COURT: I want to have this on the record outside the
15 presence.

16 MR. HAUSER: Let's do that.

17 [End of bench conference.]

18 THE COURT: All right. Ladies and gentlemen, we are
19 going to take a quick recess.

20 During the recess you're admonished not to talk or
21 converse among yourselves or with anyone else on any subject
22 connected to this trial or read, watch, or listen to any report of or
23 commentary on the trial of any person connected with this trial by
24 any medium of information, including, without limitation to
25 newspapers, television, the Internet, and radio, or form or express

1 any opinion on any subject connected with the trial until the case is
2 finally submitted to you.

3 Give me about 10 minutes, please. So be out there
4 between 2:10 and 2:15.

5 [Jury recessed at 2:02 p.m.]

6 THE COURT: All right. So we're outside the presence.

7 I want to have this talk more thoroughly, ferret it out on
8 the record, rather, and at the bench.

9 So, State, explain to me the timeline of the stolen vehicle
10 and then how it relates to the defendant's statements, to the
11 detective, when they made contact with him.

12 MR. LEXIS: Okay. So he initially denies being in any
13 vehicle or anything like that. They press him on, Well, your prints
14 are found in this car. So then he basically describes the stolen
15 vehicle car. And then admits that he was the passenger in that car.

16 He -- that particular vehicle at issue in this case was stolen
17 and the owner of that car is right outside of the courtroom, that it
18 was stolen the night prior to the shooting. So when he gets up on
19 the stand and says he has no idea why his print's on that car, that
20 he works on cars, then the timeline -- the door to the timeline of
21 when this car could have possibly be in possession of anybody
22 other than the owner is highly relevant.

23 THE COURT: So they confront -- so what -- he says that
24 he's in a car like -- look --- with all the similar --

25 MR. LEXIS: Yes.

1 THE COURT: -- characteristics at, like, 10:00 the previous
2 night?

3 MR. LEXIS: Yes.

4 THE COURT: And then the detective confronts him with,
5 Well, you couldn't have been in -- so that that vehicle --

6 MR. LEXIS: Yeah. It couldn't have been at this particular
7 timeline, because the car was taken after that.

8 THE COURT: So the description of the car that he gives,
9 though, is just a description of a car, right? He never admits to
10 being in the vehicle with the license plate.

11 MR. LEXIS: No. They don't -- no, they don't give him any
12 description of the car, and he gives them a description of a -- where
13 is it at? -- late four-door sedan, lighter brown, older model, beat-up
14 condition, being the passenger with a man named Patrick.

15 MR. HAUSER: So here's the issue, Judge. What we're
16 trying to do is conflate the car he says he was in, therefore, it must
17 actually be the stolen car. But on the stolen vehicle questionnaire,
18 he said he was in the car 10:00 p.m. previous night. Stolen vehicle
19 says it wasn't actually stolen till midnight, because that's the last
20 time the owner saw it.

21 So even if we want to bring the owner in to say that
22 vehicle was stolen, which isn't relevant, it doesn't actually match
23 the timeline that Mr. Lexis is trying to establish. His own witness is
24 contradicting his argument here. He says he still had the car at
25 midnight. They're trying to put Ted in that car at 10:00 p.m. It

1 simply doesn't work.

2 THE COURT: No, isn't it -- it's vice versa. He's putting
3 himself in the car at 10:00 p.m.

4 MR. HAUSER: Right.

5 THE COURT: The detectives are saying you couldn't have
6 been in that car at 10:00 p.m., buddy, because it wasn't stolen till
7 midnight.

8 MR. HAUSER: Right. But he's not putting himself in the
9 car that was found at the scene. He's saying he was in a completely
10 different car. The State is saying that's not true, you must have
11 been in the car that was at the scene, but it simply cannot be that
12 way, because his timeline and the timeline of the stolen car do not
13 match.

14 MR. LEXIS: Well, this is the thing, Judge. He never -- he
15 places himself in that car, but not the print in that car. And then
16 tries to say, Oh, yeah, there's no way I could have been on that car,
17 because I work on cars. Well, Judge, there's no way in his
18 testimony that he's revealed that, oh, yes, between those --
19 midnight and the time of the shooting, he was working on a car.

20 He said that he was at his house and then he went to I
21 believe he said Sonic and his girlfriend's house. Nowhere would --
22 was he working on cars.

23 MR. HAUSER: There's plenty of time there to work on
24 cars. I don't understand how that's not possible.

25 THE COURT: Well, but here's the thing. Nobody's going

1 to get there in front of that jury and say he was working on that car
2 and that's the reason why the fingerprint's on the license plate.

3 MR. HAUSER: No, not at all.

4 THE COURT: Because that would just be absolutely
5 unethical, and I don't think that either of you would do that.

6 MR. HAUSER: No.

7 THE COURT: Because it also paints a picture that's clearly
8 incorrect in front of the jury.

9 MR. HAUSER: Right.

10 THE COURT: The problem here is, is that, unfortunately, it
11 wasn't fettered out enough when he speaks to the detectives. I
12 mean, I think -- and correct me if I'm wrong, Mr. Lexis, but when he
13 was on the stand, you stated, There -- just like with the red shirt,
14 there's no reason that your fingerprint should be on that license
15 plate. I mean, he couldn't give you a good answer, right? So you
16 get to argue all day to the jury, this wasn't a car that he worked on,
17 this was -- because, obviously, that's what he would have said.

18 The problem with the vehicle being stolen is he wasn't
19 firm enough or descriptive enough in his statement to the
20 detectives to prove he was driving the car. Do you know what I'm
21 saying? Like, he gives the four-door sedan, and he gives the
22 coloring and it's all similar and everything. But he doesn't -- I don't
23 think that in his statement or even today he gives you enough room
24 to open the door. And I think also when I look at that, you know,
25 and then I look at the other bad act evidence type of stuff, where

1 we're looking at clear and convincing, and we're looking at
2 probative versus prejudicial, I just don't -- I don't think it's enough.

3 So I'm not going to allow that in. But, obviously, I expect
4 that all arguments in front of the jury would only be in regards to
5 evidence that people can prove or not prove or know to be true.

6 MR. LEXIS: Okay. Judge, so --

7 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

8 MR. LEXIS: -- if I understand your ruling right, I
9 understand we're not going with that guy, then. But, again, during
10 closing arguments, we're not going to hear of all these other
11 reasons why this man's fingerprint could be on that license plate
12 when it's clear that the timeframe of the car stolen was midnight.

13 You're not -- I understand you're not letting me in, but at
14 the same time, you're ruling's telling them, Don't try to be arguing
15 something that you know is not true.

16 THE COURT: Yeah. I mean, what was your intent in
17 regards to -- I understand the argument you can make in front of
18 the red shirt. Where were you going to go in regards to arguments
19 in regards to the license plate?

20 MR. HAUSER: I didn't ask him any questions about the
21 license plate.

22 THE COURT: I know. I'm talking about your argument in
23 front of the jury.

24 MR. HAUSER: Well, you know, the thing is I didn't expect
25 him to testify. So my argument's kind of in flux right now, I'm not

1 going to lie to you.

2 What I was going to say is the argument -- I don't care, I
3 [indiscernible]. My plan, and probably soon plan is that the
4 fingerprint is on a license plate. Any idiot can put a license plate in
5 a car, it doesn't actually put someone in that car, like a fingerprint
6 on a door handle or a window shield would.

7 THE COURT: But it's not going to be, like, he worked on
8 all sorts of cars and it could be --

9 MR. HAUSER: Oh, I'm not going to say he was ever in
10 that car that he ever touched. Not at all.

11 THE COURT: Okay.

12 MR. HAUSER: Absolutely not.

13 THE COURT: All right. That's fine.

14 MR. HAUSER: No.

15 THE COURT: Yeah.

16 THE DEFENDANT: Judge --

17 MR. HAUSER: You going to --

18 THE DEFENDANT: I understand her ruling. But I just want
19 to tell her the truth.

20 MR. HAUSER: Tell it to him first.

21 THE COURT: We good?

22 MR. HAUSER: We're good with the record we got.

23 THE COURT: Okay.

24 MR. HAUSER: Yeah.

25 MR. LEXIS: Can I just --

1 THE COURT: Just let's give them a few more -- or do you
2 need something to talk to me about?

3 MR. LEXIS: No. I just need to tell the detective what he
4 needs to cut out.

5 THE COURT: Yeah. Let's make it sure with the detective
6 on both sides that the questions and answers are going to be well
7 thought out, because we're way too far in this game to get
8 someone to utter something that we don't need uttered.

9 MR. HAUSER: Yeah, we don't want to [indiscernible].

10 THE COURT: All right? So let's make --

11 MR. SHAYGAN-FATEMI: Your Honor -- didn't Your Honor
12 just preclude them from calling the detective?

13 THE COURT: No, no, no. He can get into the statement, if
14 in any way he was inconsistent or anything like that. But they're
15 not -- I precluded them from bringing in the stolen car owner, who
16 is outside.

17 MR. SHAYGAN-FATEMI: And we trust you'll do that, Your
18 Honor. Thank you.

19 THE COURT: Okay.

20 MR. HAUSER: Thank you, Judge.

21 THE COURT: All right. So I'll see you guys in five.

22 [Court recessed at 2:11 p.m., until 2:20 p.m.]

23 [Outside the presence of the jury.]

24 THE COURT: All right. We're back on the record is
25 C-345584-1, State of Nevada versus Ted Michael Donko. Mr. Donko

1 is present with his attorneys, Mr. Shaygan and Mr. Hauser. Both
2 deputy district attorneys, Ms. Rose Goodman, as well as Mr. Lexis,
3 are present.

4 Anything outside the presence of the jury?

5 MR. LEXIS: No, Judge.

6 MR. HAUSER: No.

7 THE COURT: All right. Let's go.

8 [Jury reconvened at 2:20 p.m.]

9 THE COURT: Both sides stipulate to the presence of the
10 jury?

11 MR. LEXIS: Yes, Judge.

12 MR. HAUSER: Yes, Judge.

13 THE COURT: All right. We are now in the State's rebuttal
14 presentation.

15 MR. LEXIS: Detective Marin.

16 **JASON MARIN,**

17 [having been recalled as a witness and first duly sworn, testified as
18 follows:]

19 THE CLERK: Thank you. You may be seated. Please state
20 your complete name, and spell both your first and last name for the
21 record.

22 THE WITNESS: Jason Marin, J-A-S-O-N, M-A-R-I-N.

23 THE CLERK: Thank you.

24 ///

25 ///

100

1 **DIRECT EXAMINATION**

2 BY MR. LEXIS:

3 Q Detective, do you remember interviewing the defendant?

4 A Yes.

5 Q And as far as tactics, is it common for detectives to hold
6 back certain evidence and then present certain evidence, and as a
7 tactic to get them to talk and see what they're going to say?

8 A Yes.

9 Q Okay. Did you initially confront the defendant on whether
10 or not he knew about the shooting?

11 A Yes.

12 Q And what was his response?

13 A He denied knowing about the shooting.

14 Q After looping back and confronting him some more, what
15 did -- did he eventually change his story?

16 A Yes. He said he heard that a shooting had occurred on
17 Linn Lane.

18 Q Okay. Did you eventually, during this interview, ask him
19 knew a man named Shorty?

20 A Yes.

21 Q And what did he initially say?

22 A He denied knowing Shorty.

23 Q After confronting him with some more evidence and
24 asking him again, did he switch his story?

25 A He said he knew a Short Dog.

1 Q Now, did you keep prying?

2 A Yes.

3 Q And, eventually, what did he say?

4 A He said he did know Shorty.

5 Q Sir, did he ever mention that he knew a DeAndre Woods?

6 A No.

7 Q Was there any evidence in this investigation linking those

8 two as knowing each other?

9 A No.

10 Q Now, sir, obviously, one of the tactics you were going to

11 use to try to get him to talk and extract evidence is this fingerprint,

12 correct?

13 A Correct.

14 Q This fingerprint found in the vehicle?

15 A Correct.

16 Q Okay. Did you confront him on that you had a fingerprint

17 in the vehicle?

18 A Yes.

19 Q Did you press him and ask him more and more about it?

20 A Yes. I mentioned the fingerprint several times.

21 Q Okay. Did he eventually start saying, Oh, well, I happened

22 to be in a vehicle the night before?

23 A Yes.

24 Q Okay. Did you ever described for him -- to him, before

25 giving him an opportunity to explain the vehicle, what the vehicle

1 actually was where the fingerprint was found?

2 A No.

3 Q Okay. And how did he describe this vehicle?

4 A And older model sedan in beat-up condition.

5 Q Did he ever tell you it was an Audi?

6 A No.

7 Q And with pressing him some more, did he reveal whether
8 he was the driver or the passenger of that vehicle?

9 A The passenger.

10 MR. LEXIS: Nothing further.

11 THE COURT: Cross, Mr. Hauser?

12 MR. HAUSER: Yes, Judge.

13 **CROSS-EXAMINATION**

14 BY MR. HAUSER:

15 Q Detective, has anyone ever lied to you in your life?

16 A Yes.

17 Q In your job?

18 A Yes.

19 Q Do people get nervous speaking to the police?

20 A Yes.

21 Q Do people in bad neighborhoods, when you're asking
22 about shootings, get nervous talking to the police?

23 A Yes.

24 Q Do those people sometimes change their story
25 afterwards?

1 A Yes.

2 Q A lot of times when they change their story, do they end
3 up telling you the truth?

4 A No. Not always.

5 Q Not always, but sometimes, right?

6 A Maybe.

7 Q No one ever tells you the truth?

8 A Correct. People tell us the truth. But when you're saying
9 people are continuing lying, then tell us the truth, it's very rare.

10 Q They don't ever confess later, tell you the truth?

11 A Sometimes. It's rare.

12 Q You've been down in this neighborhood, right?

13 A Yes.

14 Q Is it fair to say that there's only one in the entire
15 neighborhood older model beat-up four-door sedan?

16 A No.

17 Q There might be more?

18 A Yes.

19 Q Even some that are gray or silver and tan in color?

20 A Yes.

21 MR. HAUSER: I have nothing further at this time.

22 THE COURT: Okay.

23 MR. SHAYGAN-FATEMI: Your Honor, a moment of
24 indulgence before the witness --

25 THE COURT: Sure. Yeah.

1 MR. HAUSER: We're all set, Judge. Thank you.
2 THE COURT: Okay. State?
3 MR. LEXIS: Nothing further, Judge.
4 THE COURT: Anything from the jurors? All right.
5 So this time you really are released.
6 THE WITNESS: Thank you, Your Honor.
7 THE COURT: Please don't share your testimony with
8 anyone else involved in the case.
9 THE WITNESS: Thank you, Your Honor.
10 THE COURT: All right. Thank you. Have a great day.
11 State?
12 MR. LEXIS: State rests, Judge.
13 THE COURT: All right. Okay. At this time -- do the parties
14 need a second to set up for closing arguments, or are we ready to
15 go? Obviously, I have to read the instructions and everything.
16 MR. HAUSER: Yeah. I can grab some exhibits while
17 you're doing that.
18 MR. LEXIS: Judge, can we approach real quick?
19 THE COURT: Sure.
20 [Bench conference transcribed as follows.]
21 MR. LEXIS: I need to go get my thumb drive, Judge.
22 That's it. But I could do that while you're reading instructions.
23 MS. GOODMAN: [Indiscernible] 30 of them.
24 MR. LEXIS: Yeah. Are you guys ready?
25 MR. HAUSER: Oh, yeah. I just need to get some exhibits

1 from over here, and I'm ready.

2 THE COURT: Okay. While he's doing this, you go get
3 that, and you get that.

4 MR. HAUSER: Yeah. Yeah, yeah.

5 MR. LEXIS: Okay.

6 [End of bench conference.]

7 [Pause in proceedings.]

8 THE DEFENDANT: Excuse me, Your Honor.

9 THE COURT: Just one second.

10 THE DEFENDANT: I want to say something.

11 MR. HAUSER: Don't do that.

12 MS. GOODMAN: Your Honor, may we approach, please.

13 THE COURT: Sure.

14 [Bench conference transcribed as follows.]

15 MS. GOODMAN: I would rather have a break if there is
16 something that he just can't contain himself on, outside the
17 presence. Or is he going to be fine?

18 THE COURT: Or does he have an issue?

19 MR. HAUSER: Perpetually. But up to you.

20 THE COURT: What is he -- is what he wants to talk to me
21 about something you didn't do probably, like answer a specific
22 question?

23 MR. SHAYGAN-FATEMI: Yep.

24 MR. HAUSER: Yeah.

25 MR. SHAYGAN-FATEMI: Yep.

1 THE COURT: Or whatever --

2 MR. HAUSER: Cool.

3 MS. GOODMAN: Thank you, Your Honor.

4 [End of bench conference.]

5 THE COURT: All right. Ladies and gentlemen, now is the
6 time that I will read you the instructions on the law that applies to
7 this case. So each of you, obviously, can read along with me, but
8 you also get to take them back in the room. I'm a really quick
9 reader, and sometimes jurors panic that they're not going to get
10 those when they get back. But I promise you those will go back. So
11 feel free to take notes on them or whatever, they will go back to
12 you, as well as your notepads, in the deliberations room. Okay? All
13 right.

14 [Jury instructions read.]

15 THE COURT: So, ladies and gentlemen, we have now
16 reached the portion of this trial where closing arguments are given.
17 Since the State has the burden of proof, they are allowed to both
18 give the open and close of the closing arguments.

19 So, State, I will turn it over to you.

20 MS. GOODMAN: Thank you, Your Honor.

21 **CLOSING ARGUMENT FOR THE STATE**

22 MS. GOODMAN: Ladies and gentlemen, we heard, Fuck
23 Shorty, pop, pop, pop, pop, pop, pop, pop, eight times. The State of
24 Nevada has to prove two things in any criminal trial. That is,
25 number one, a crime has been committed; and number two, it's the

1 defendant who committed the crime. I don't think that there's
2 much dispute on whether or not a crime was committed. But, since
3 we still hold our burden, which we're proud to bear, I still have to
4 teach you about the law, what the law says and how, elementally,
5 does this fit this crime.

6 So we're going to break down the crimes in itself. So we
7 have three counts of attempt murder with use of deadly weapon.
8 One count is for DeAndre Woods. One count is for Jonathan
9 Sanchez. And one count is Fernando Espinoza.

10 Battery with use of deadly weapon resulting in substantial
11 bodily harm, times two, which is Jonathan Sanchez and one for
12 Fernando Espinoza.

13 Then we have the count for assault with deadly weapon,
14 which the victim in this case was -- in that count is DeAndre Woods.

15 Discharging a firearm at or into an occupied structure. So
16 we're going to break down all these charges. But the easiest one to
17 break down is what a deadly weapon is. So a deadly weapon is,
18 one, an instrument in the ordinary manner contemplated by design
19 and construction will or is likely to cause substantial bodily harm or
20 death. Like for number one, a firearm, by its own basic design,
21 when you shoot it and you pull the trigger, it's meant to cause
22 bodily harm, or it can.

23 Or -- and now whenever you see an and or or, it's an or
24 test. Not a -- it's a -- I can either stick it in my number one or
25 number two.

1 Two, any weapon under the circumstances in which it's
2 used, attempted to be used, or threatened to be used, is readily
3 capable of causing substantial bodily harm or death. What that
4 means is if I take a pen, which is just a pen that you write with on
5 an everyday basis, but since -- now, with Mr. Lexis walking in, I start
6 stabbing him with that pen, that means that pen turns into a deadly
7 weapon. Why? Because now I'm using that pen to cause
8 substantial bodily harm. That's what that part is.

9 Well, in this case, we know that a firearm was used.
10 Oop, -- sorry. State does not have to recover or produce the deadly
11 weapon. Okay. So, why? It makes sense, right? When somebody
12 just does a shooting, the first thing that typically happens, go and
13 ditch the gun. Okay. That's what our common sense says it's --
14 you typically don't carry the gun with you after committing a
15 shooting. So the State does not have to recover or produce a
16 deadly weapon to prove beyond a reasonable doubt the deadly
17 weapon was used.

18 Again, had it easier, because it's a firearm that's used. We
19 know it was used, because there's bullets inside bodies. So a
20 firearm is a deadly weapon. So every single count that you see
21 deadly weapon, deadly weapon -- that that portion's satisfied.

22 So battery with use of deadly weapon resulting in
23 substantial bodily harm. So one, we have to prove a battery that
24 happened with a deadly weapon, and it -- that substantial bodily
25 harm occurred. So we're going to break those down.

1 What is a battery? Battery means any wilful and unlawful
2 use of force or violence upon the person of another. Again, a push,
3 a shove, I if take this pointer and throw it at Mr. Lexis, those are all
4 batteries. Any slight touching not done on accident.

5 Substantial bodily harm means bodily injury which
6 creates substantial risk of death or which causes serious permanent
7 disfigurement or protracted loss or impairment of the function of
8 any bodily member or organ. Again, there's the or, so it's either
9 one or two or both.

10 Two, prolonged physical pain. And what that means is
11 some physical suffering or injury that lasts longer than the pain
12 immediately resulting from the wrongful act. Again, it's pretty easy
13 in this case, right? So Fernando Espinoza, gunshot wound to the
14 stomach and wrist. Several surgeries, last surgery was just two
15 weeks ago. You saw that he just had that on his arm. Still suffering
16 four months later. Scar from the gunshot, permanent
17 disfigurement, right? He's still suffering. He -- it's not like he
18 recovered in the same second that the gunshot happened; he's still
19 recovering four months later. Easy, substantial bodily harm is met
20 on Fernando.

21 Jonathan, shot in both legs, walks with a cane, left leg,
22 bullet's still in there, impaired walking, right leg scarring. Again,
23 he's walking with a cane. Substantial bodily harm, ladies and
24 gentlemen, that's easy.

25 Okay. So assault with deadly weapon. So battery with

1 use of deadly weapon resulting in substantial bodily harm. You
2 have the battery, because bullet -- you've got shot with a bullet,
3 right? That's the battery. You have the deadly weapon with the
4 firearm. Substantial bodily harm. All those things we just talked
5 about. Easy. Battery with substantial bodily harm in this case is
6 met by beyond a reasonable doubt with the crimes committed.

7 So assault with a deadly weapon, what does that mean?
8 A person who unlawfully attempts to use physical force or
9 intentionally places another person in reasonable apprehension of a
10 immediate bodily harm is guilty of assault with deadly weapon.

11 To constitute an assault, it's not necessary that the actual
12 injury be inflicted. Okay. Well, I know it sounded like a silly
13 question, because when we point guns in peoples' face or towards
14 them or shoot bullets at them, you're going to be in fear of your life,
15 because of -- you're getting a firearm aimed at you.

16 Again, assault with deadly weapon is pretty easy in this
17 case. DeAndre testified, yeah, I was scared. Bullets were actually
18 fired at him. Any reasonable person would be scared of that, which
19 assault with deadly weapon is met. So again, beyond a reasonable
20 doubt, that the crime of assault with deadly weapon was
21 committed.

22 Oh, we just talked about aiming a firearm at DeAndre,
23 firing at DeAndre, both constitutes the assault.

24 Again, evidence where DeAndre was sitting in that black
25 plastic chair that's all shot up, but had he moved, he would be shot

1 himself.

2 So discharging at or into occupied structure; what is that?
3 What is that count? Willfully and maliciously discharges firearm at
4 or into any house that is occupied. What do we have here? Again,
5 easy. Shoots eight rounds towards the house and into the house,
6 which, because it struck the house twice in the garage, occupied by
7 grownups and kids. You heard from DeAndre that there's kids in
8 that home. There's also adults in that home.

9 Again, beyond a reasonable doubt discharging at or into
10 occupied structure is met, pretty -- all, again, easy.

11 So comes up with attempt murder with use of deadly
12 weapon. An attempt murder is a little bit bigger of a charge, right?
13 Because it's attempt murder with use of deadly weapon. So there's
14 a little bit more elements to be met in attempt murder.

15 So what's an attempt? This isn't a murder; it's an attempt.
16 So what's an attempt? Number one, the attempt to commit the
17 crime, performance of some act towards its commission, and
18 failure to consummate. So it's -- I'm going to go up to a house and
19 shoot at a bunch of people, but I actually don't kill them, it's an
20 attempt, not a murder.

21 But what's the attempt murder? Performance of an act or
22 acts which tend, but fail to kill a human being. When such acts are
23 done with express malice, mingling with a deliberate intention to
24 unlawfully kill, it is not necessary to prove the elements of
25 premeditation and deliberation in order to prove attempt murder.

1 When we hear murder, what's the first thing we kind of think about?
2 That premeditated, oh, I meant to go do this; that's not an element
3 of attempt murder.

4 So what's express malice? The deliberate intention
5 unlawfully to take away the life of a human, which is manifested by
6 external circumstances capable of proof. Unfortunately, in crimes,
7 we don't have manifestos, we don't have somebody or confessions
8 all the time, we don't have the reasons why people do things.

9 So how we get to that express malice is all the factors that
10 happen in the case. And you're actually instructed, the intention to
11 kill may be ascertained and deduced from the facts and
12 circumstances of the killing, such as the use of a weapon, again,
13 firearm, the manner of its use, and attendant circumstances
14 characterized in the act.

15 So how do we know the attempt murder happened in this
16 case? Well, Donko states, Fuck Shorty. Aims and shoots and
17 sprays into people and hitting the house, hitting two people.
18 Express malice, when you point, aim, and fire a weapon, there is
19 one thing you're trying to do. You're not trying to scare them.
20 When you're aiming at someone, pointing a gun, shooting, pop,
21 pop, pop, pop, pop, it's not one shot, not two shots, not even three
22 shots. Eight shots. Express malice.

23 Bullet impacted the house, not just all around.
24 [Indiscernible] on the [indiscernible], please. Again, ladies and
25 gentlemen, this case is not -- you see the casings, you see the bullet

1 holes, you see the bullet part holes to the house. You see the chair
2 that DeAndre almost got shot. I showed you pictures of Fernando,
3 who got shot in the abdomen and in the wrist. Jonathan, who got
4 shot right -- well, you saw where he got shot up in his upper thighs.
5 We all know what's in the upper thighs, arteries and stuff. Ladies
6 and gentlemen, attempt murder is satisfied in this case. We have
7 proved beyond a reasonable doubt that attempt murder with use of
8 a deadly weapon was committed in this case.

9 So why are we here? Right? Why did we just spend all
10 this time presenting evidence if we know all the things were
11 committed? Well, we also have to prove another thing, right? The
12 defendant is the one who committed the crime.

13 And in this case, right, who did it? Ted Donko, and we'll
14 tell you why. But who -- the shooter equals Ted Donko. How do we
15 know that?

16 So you have Mr. Ramos. He says two to five minutes
17 later -- two -- and I'm sorry, about two minutes, he said, Saw Donko
18 pulling around the corner quickly in the Toyota. Describes white
19 male with red shirt.

20 Now, Mr. Ramos, who sees the defendant, doesn't say
21 Mexican male or Hispanic male. He says white. See Donko park
22 and exit the car, acting suspicious, patting his pants, goes back to
23 the car, runs off to surf. Tells police, identifies the car.

24 Now, in court he identifies Donko. And as you heard in
25 the last cross-exam -- or the cross-examination of the detective,

1 right, people get nervous from this neighborhood. Do people not
2 want to get up there and tell you everything that happened?
3 Obviously. Obviously.

4 Are people scared to come up and testify? Do people
5 want to sit on this stand, look that man, and say, yeah, that's him.
6 That one. Ladies and gentlemen, common sense. When your
7 mother lives in this neighborhood, your mom lives in this
8 neighborhood, the last thing you want to do is point out somebody
9 and say, That guy. The last thing.

10 So he goes out in the hallway and knows he has to come
11 back and do the right thing. That's what he does. And he identifies
12 Ted Donko, that gentleman right there. He was too scared to do it
13 the first time, and he had to come back and do it the second.

14 But he identifies him as white, identifies Donko. That
15 came out of that same vehicle.

16 But Mr. Ramos is not the only witness that we had in this
17 case that identifies Ted. We have the Toyota. So that gray, sandy,
18 whatever you want to call -- whatever color you want to call it, the
19 gray Toyota. And by the way, you see it at the -- it's dull. That car
20 right next to it is a silver car. You see that the silver/gray, the color
21 difference in there. It's easy to confuse. You have the Toyota,
22 which the license plate was found wedged between the driver's
23 seat and the console there. That's for the -- that's a plate.

24 And what does that plate have? It identifies the
25 fingerprint of Ted Donko. You see a cartridge and what is that --

1 what's unique about that cartridge? Again, same cartridge that's
2 found at the scene of the crime. Same head stamp, same thing, just
3 not fired.

4 Weird. Right? Not so much of a coincidence anymore
5 that two people identified Ted Donko. One person as the shooter,
6 one person that says that he got out of the vehicle. Now you have
7 cartridge casings from the same shooting that just occurred. Not a
8 coincidence, ladies and gentlemen. Not a mere coincidence.

9 So now you have DeAndre Woods. Now, DeAndre, as
10 you saw up on the stand, is from that neighborhood. As you saw,
11 DeAndre said that he saw Donko the day before. At no time, no
12 time in this case, besides the defendant's statement, did DeAndre
13 say, Yeah, yeah, I smoked weed with him. I know him from the
14 block. I know him. No.

15 What's he say? I saw him the day before the shooting. He
16 was asking for Shorty, sees the same car that he pulled up in, the
17 same Donko on the red shirt. Here -- oh, then the days and the next
18 day, same Donko in the red shirt, drives up in the same car. Hears
19 him say, Fuck Shorty. Picks him out of a lineup. Okay? That lineup
20 right there, yeah, we -- the detectives aren't in the business of
21 putting a bunch of Hispanic males and then him taking it out the
22 one person that was white. That's not what the detectives are
23 going to do. The detectives are going to -- whatever specs of
24 Donko, that's what the detectives are going to put in their lineup.

25 He picks him up out of the lineup. Those witness

1 instructions don't pick anybody out if you don't recognize them as
2 the shooter. Right? Don't pick them out of the lineup, you're not
3 just picking any individual out that you know.

4 He then put -- but he puts up -- he puts in that it's 95
5 percent the shooter. And you heard, Oh, well, what DeAndre, what
6 would make it 100 percent? If his hair was shorter.

7 You didn't hear DeAndre say, Oh, if he didn't have tattoos,
8 yeah, that would be him. Or if I thought he was white and/or -- I --
9 maybe if he was more Hispanic, it would be him. No. Right? He
10 says that -- he picked and circled, that that's the shooter.

11 You heard him that he testified at the preliminary hearing
12 in this case. Still identifies the defendant.

13 Identifies him at trial. And, ladies and gentlemen, did
14 DeAndre sit up here and immediately say, Yeah, that's him, that's
15 him, that's the guy, that's the guy, I'm 100 percent sure? He's, like,
16 Yeah, that's him. Yeah, that guy. And he's looking at him, looking
17 at him, looking at him.

18 And then he sits there and I say, DeAndre, are you 100
19 percent sure that this is the guy? 100 percent? He looked at him,
20 did you see? It's not like he automatically was, like, Yep. He sat
21 here looking at him, looking at him. And what does he say? I'm
22 sure. It's not like he's making a quick judgment that this is
23 definitely -- this is the guy. He wants to look at him, he wants to
24 see, Yeah, that's him. Just to make sure. He says, I'm sure.

25 Then he says, This whole thing about defendant, that

1 where the car went, where the direction was going. He says went
2 toward Charleston and goes towards Christie.

3 But again, ladies and gentlemen, it's not just Mr. Ramos's
4 testimony that we have. It's not just DeAndre Woods' identification
5 that we have. What do we also have? A red shirt. Again,
6 coincidence? Coincidence that it's just laying around the block?
7 This red shirt was found, Ted Donko.

8 Now, let's talk about this contributor, right? Someone
9 else's DNA is on that shirt. Someone else -- that's someone else's
10 shirt. I don't know, maybe my shirt, but somebody -- I don't
11 know. 99 to 1. 99 to Donko, 1 to the other contributor.

12 Ladies and gentlemen, use your common sense on what
13 that means. I don't have to point that out. I mean, 99 to 1 is Ted
14 Donko's DNA is on that shirt. So 13.6 octillion times more likely it
15 originated from Ted Donko.

16 That number is huge. Right? That number is huge. In a
17 science world, it's not just yes, absolutely, 100 percent sure,
18 because that's not how scientists work. Right? But it's 13.6 octillion
19 times more likely to be Ted Donko's DNA on that shirt, a 99-to-1
20 contributor, 99 being Ted Donko.

21 And you have the surveillance. And you're going to have
22 this. And I encourage you to watch it. And when you watch it, and
23 you watch it over again if you choose to, just happens to have a
24 man who's walking the same direction in a red shirt, who's bald,
25 looking around. And when you watch that shirt -- when you watch

1 that and when you see the stills, look at it. Okay. Look at it. I don't
2 think you're going to see a Hispanic Mexican dude in that video or
3 on those stills.

4 So just coincidence that the shooting happened at 56
5 Lane -- 56 Linn Lane and the car headed to Charleston towards
6 Christie, and that just coincidence that Christie goes back up and
7 goes back into that neighborhood? Coincidence that Ramos,
8 minutes later, minutes thereafter, identified the defendant coming
9 out of that same Toyota Corolla where the cartridge was found, the
10 same cartridge that matched the casings in a shooting? Just
11 coincidence that then the surveillance shows a red shirt?
12 Coincidence that Ted Donko's shirt is then left in the path of two
13 where he was staying.

14 Ladies and gentlemen, it's not coincidence. Right? It's
15 not a coincidence.

16 We have the casings and -- the casings, we have the head
17 stamp of all those casings which match. Which match the cartridge
18 found in the car.

19 So the evidence. DeAndre identifies Donko. Ramos
20 identifies Donko. Donko's fingerprints are on the license plate
21 found inside that Toyota. Fingerprints. So unique, right? So
22 unique that that's how you tell twins apart. That's your fingerprints.
23 Every individual has their fingerprints. It just doesn't happen -- by
24 happenstance, having Ted Donko's on them.

25 Why was a license plate important to the detective? Well,

1 it's something that you grab, in and out. It just so happens that that
2 car doesn't have a license plate on it right after the scene of a
3 shooting. Donko's DNA on the red shirt. 99 to 1. Head stamps
4 from casings match the head stamp found in the vehicle. The WIN -
5 same WIN .04 S&W. Donko lives right up the street. So what
6 makes sense?

7 Ladies and gentlemen, I asked you at the beginning of this
8 trial to use your common sense. I keep saying, common sense,
9 common sense, common sense. What makes sense in this case?
10 Well, here's the map.

11 Who can make a clean getaway? You heard that these
12 officers arrived two minutes after the shooting, a little over two
13 minutes after the shooting, right? Who can make a clean getaway?
14 Well, you have Donko, who is passenger, shooting, and then you
15 have the driver. Plenty of time -- plenty of time to let a passenger
16 out, license plate's off the car, jump in the car, and haul it back to
17 your neighborhood where you know you can make a clean
18 getaway.

19 You know that if you go right around the block, you can
20 take your shirt off and get to your house. Plenty of time. That
21 block's not that big. But who can make the clean getaway? Well,
22 he can.

23 We know by driving from Linn Street up and around the
24 block, that's not going to take two minutes. That's not going to --
25 especially when you're going back and Ramos, why did Ramos

1 notice the car? It's hauling butt turning the corner. That's why he
2 notices it.

3 Again, who can make a clean getaway? Well, Donko can.
4 His house is right here. Shoots, goes, goes to the pass, knows he
5 can ditch the car. Goes -- and you can see in that video, he's, like,
6 oh, oh, notice -- that's not parked on Linn. That's not -- that doesn't
7 go back to the crime scene, right? That's not parked at Linn.
8 Strategically, it's parked right at Surf.

9 Knows the block. How do you know -- how do you think --
10 you think it's another coincidence that Toyota's just parked right
11 there by Surf? No. You know this block. You know that you can up
12 Surf, you can go down the other block, ditch your shirt, go back
13 home before you get seen on Linn.

14 Who can make a clean getaway? He can.

15 Again, I'm not just telling you to use your common sense
16 because, you know, that's what I -- that's what your dad says. Use
17 your common sense, every day, or your parents are, like, Use your
18 common sense today. No, ladies and gentlemen, you don't just
19 check your common sense at the door. You don't take all of your
20 experiences in life and just say, Oh, nope, I'm a juror now, can't
21 think about all that other stuff. No.

22 Although you are to consider only the evidence in this
23 case in reaching a verdict, you must bring to the consideration of
24 evidence your everyday common sense and judgment as
25 reasonable men and women. Thus, you are not limited solely to

1 what you see and hear as witnesses testifying. You may draw
2 reasonable inferences from the evidence which you are feel
3 justified in the light of common experience, keeping in mind that
4 such inferences should not be based on speculation and guess. A
5 verdict may never be influenced by sympathy, prejudice, or public
6 opinion. You're just in it to be the product of sincere judgment
7 and sound discretion in accordance with these rules of law.

8 Ladies and gentlemen, as I said to you at the beginning of
9 this trial, and I will say it to you at the end of this trial, use your
10 common sense. Use your reason as men and women in this case.

11 You're going to find the verdict form. Battery with use of
12 a deadly weapon resulting in substantial bodily harm. Guilty of
13 battery with the use of deadly weapon resulting in substantial
14 bodily harm.

15 You're going to see that you see guilty of battery with a
16 deadly weapon, guilty of battery and also guilty of bodily harm,
17 guilty of battery -- we have already talked about all the charges.
18 We -- the charge aren't going to speak in this case.

19 Guilty on Count 1, guilty on Count 2, guilty on
20 Count 3, 4, 5, with the intent to murder, with use of a deadly
21 weapon charge, guilty on 6, and guilty on 7.

22 Ladies and gentlemen of the jury, Ted Donko in this case
23 is the shooter. DeAndre Woods, I'm sure. Ramos, that's the guy.
24 DNA, fingerprints. Ladies and gentlemen, find him guilty on all
25 counts.

1 Thank you.

2 THE COURT: All right. Thank you.

3 Mr. Hauser, do you need set-up or anything?

4 MR. HAUSER: I'm going to use this, but that's about it.

5 THE COURT: Do you -- I meant, did you -- do you need
6 the podium, is what I meant.

7 MR. HAUSER: No, I don't need the podium.

8 THE COURT: Okay.

9 MR. HAUSER: No, thank you, Judge.

10 How do I turn this? Like that.

11 **REBUTTAL CLOSING ARGUMENT FOR THE DEFENDANT**

12 MR. HAUSER: A Mexican man with no tattoos committed
13 this crime. Two Mexican men drove up, shot up a driveway, and
14 got away with it. Because instead, Ted Donko sits here. A Mexican
15 man with no tattoos committed this crime.

16 Members of the jury, you heard the State talk a lot about
17 the evidence that's before you. And when they list it all out like
18 that, it sounds like a lot. Well, there's ID, there's another ID, there's
19 fingerprints, there's DNA. That's the simple way of looking at it.

20 What I'm asking you to do today is not easy. What I'm
21 asking you to do today is not take the easy way out. I'm asking you
22 to look at this very carefully. Because when you look at the
23 evidence in this case very carefully, you'll see that you have two
24 choices, because you have two different sets of evidence that
25 contradict each other in every way. Which one are you going to

1 believe?

2 But the problem is neither of them gets you to beyond a
3 reasonable doubt that Ted Donko committed this crime. A Mexican
4 man with no tattoos shot up that house.

5 Ms. Rose told you a few moments ago that she was proud
6 to bear the burden in this case. But for someone who's so proud to
7 bear that burden, she didn't actually tell you a lot about what it was.
8 That's because it's not something the State likes to talk about,
9 because of just how high that burden is.

10 The State has to prove to you each and every element in
11 this case beyond a reasonable doubt. As you heard, that's the
12 highest burden in our justice system. There is no courtroom
13 anywhere in America in any way with a higher burden than this one
14 right here. Because here in America, we value freedom more than
15 money. So when money's at stake, the burden's just more likely
16 than not.

17 But that's not what's at stake today. For Ted, it's freedom
18 itself. It's liberty. And this burden is the price the government has
19 to pay if they want to take that away. That's why the burden is so
20 high.

21 And that's why the State and the State alone bears it.
22 Because we as the defense, we don't bear that burden. In our
23 justice system, you don't have to come up here and prove that you
24 are innocent. You sit before that court, innocent unless proven
25 guilty.

1 So Kambi and I, we don't have to do anything in this trial.
2 We didn't have to ask any questions. When you were all sitting in
3 here with a full panel, Kambi didn't have to get up here and ask you
4 anything. He didn't have to make an opening. We didn't have to
5 get up here and question any witnesses. Ted didn't have to take the
6 stand. And I don't have to be up here right now.

7 I could have sat here next to Kambi this entire trial and not
8 said a single word, just like this. And it wouldn't change where the
9 burden lies. The State and the State alone has to provide yo with
10 the evidence you need to reach the highest burden in the land, to
11 give you an abiding conviction that only Ted Donko could have
12 committed this crime. The evidence today doesn't meet that
13 burden.

14 So let's start talking about it. Our main witness in this
15 whole case, we know, is DeAndre Woods. Because DeAndre
16 Woods is the only person who was at the shooting who then IDs
17 Mr. Donko. And I know he pointed to him in here, and Ms. Rose
18 made a big deal about her standing over here and making sure that
19 it was okay.

20 But let's think about what that ID actually entails. Because
21 if we're to believe that Ted Donko is the shooter based on DeAndre
22 Woods, we have to disbelieve DeAndre Woods. Because he's the
23 only person that you heard from in here to give you a description of
24 the shooter. He didn't say white guy, tatted up on his face and
25 arms. He said a Mexican man with no tattoos, no facial hair, and a

1 bald head. That was his exact description to the police.

2 And I confirmed that with Detective Marin on the stand.
3 Because DeAndre, he came up here, and I get it, we're all nervous.
4 But the thing is, when I asked him about it, he started waffling.
5 Well, that's not what I told the cops. Well, you know, I was trying to
6 tell them that I didn't really get a good look at the guy.

7 In fact, from behind the car all the way down the driveway
8 on the other side of the shooter's car, I couldn't really see him,
9 because I was focused on his eyes and his eyes alone. And the
10 gun. I could only see the gun and his eyes.

11 What does this story tell us? This story tells us that, one,
12 we know that isn't how appearances work. We know when
13 you're 20 feet away, you're not only looking at the eyes and not
14 seeing the rest of the face. And you certainly wouldn't just make it
15 up. When the cops ask you that question, you're not going to be,
16 like, eh, I'll just pick a race out of a hat, I'll pick a description out of a
17 hat and, eh, that'll stick. No. You want to give the description of
18 who you just saw.

19 Now, of course, he's trying to get away. Which is
20 reasonable. Which means we should probably rely on the
21 description from the day before, when he had a face-to-face
22 conversation with the man he says showed up later. Who was that
23 man? A Mexican man with no tattoos, no facial hair, and a bald
24 head. That's the description of the shooter in this case.

25 So if we're to believe his identification, we have to ignore

1 what the detective told us is the important description. Because the
2 detective told us on the stand just today, you interview people on
3 the day of, because it's the most fresh in their minds. Not what is
4 now 136 days later. That's not when you remember the most
5 details. You remember it right away. And right away, what did he
6 tell us? A Mexican man with no tattoos, no facial hair, and a bald
7 head committed this crime.

8 You know what he didn't tell us? It was Ted Donko. He
9 never told that to the police. And that's all that you need. Because
10 it turns out he knows Ted. And apparently he doesn't like to admit
11 that on the stand, which I get. No one wants to come before the
12 Court and say, like, oh, yeah, I get high with dudes in my
13 neighborhood. That's not something you want to confess to a
14 group of strangers, much less a judge or a DA who could prosecute
15 you. So he didn't want to say.

16 But he knows Ted. Ted has lived in that neighborhood
17 four years and they've gotten high together. And if you see
18 someone you know committing a crime, and they ask you what you
19 look like, you have two options. One, you can lie, but we're not
20 supposed to do that, and we don't believe he did here. Or two, you
21 get an accurate description. You tell then exactly who you saw.
22 And if you happen to know the name, you'd say. Who committed
23 the shooting? Oh, it was Ted Donko. That's what he would have
24 said if it had actually been Ted.

25 But what we're left with instead is the person who actually

1 did it, and he's not in this courtroom. He's a Mexican man with no
2 tattoos, no facial hair, and a bald head.

3 So why did he pick him out of a lineup? Why, if he didn't
4 think Ted was the guy, did he bother to point him out in the lineup?
5 We all saw the lineup. You're going to see it again back there.
6 Who's the closest to the description he gave? It's Ted. Which of
7 these six guys is a face he knows? Ted's. Which of these guys has
8 he seen around the area of the shooting before, because he lives in
9 the neighborhood? Ted.

10 So when he's looking at a lineup of six guys who don't
11 match his description of the shooter at all, he did the best he could.
12 And he picked the only face he knew. And I get that.

13 When you're under pressure, when the cops are asking
14 you questions, you want to be helpful. You don't want to tell them
15 that they're wrong, so you pick Ted. That's how we get here.
16 Everything comes from that lineup. Everything comes from the
17 fingerprint.

18 But what it doesn't mean is that we throw away the fresh
19 testimony, a Mexican man, no tattoos, no facial hair, and a bald
20 head. And, members of the jury, I want you to think all the way
21 back to the first witness in the case, the officer who was the initial
22 responder, Officer Hennig.

23 I asked him on the stand, What was the initial description
24 you got? Oh, it was for two Hispanic males. Who gave you that
25 description? The witnesses at the scene. Was it DeAndre Woods

1 who gave it to you? No, it was someone else. And how did he
2 describe those witnesses by race? Hispanic.

3 So the Hispanic witnesses who were there said it was
4 Hispanic guys. DeAndre Woods, who was there, said it was
5 Mexican guys. We don't know who did it. All we know is what they
6 look like. Mexican man, no tattoos, no facial hair, and a bald head.

7 DeAndre Woods' ID gets us nowhere in this case. When
8 the witness has to contradict himself, that does not meet the
9 standard you have to. That is not proof beyond a reasonable doubt.
10 Which means you must not convict Ted Donko.

11 But there's a second ID. Mr. Ramos, he ID'd him the
12 second time around. So what did we learn? When he saw the car
13 pull up in front, he says he saw Ted get out and walk away. So
14 we're talking about an interaction that he had no particular reason
15 to remember. Because after all, when someone pulls up in front of
16 somebody's house, you might see them, and if they walk away,
17 okay. We're done here. There's nothing particularly memorable
18 about that.

19 If Ted had been waving a gun around in the air, maybe
20 there would be some reason to remember all the specific details of
21 this. But he wasn't. This is just some guy who pulls up and walks
22 away. So how long does that take? A few seconds? Even if you
23 have a patted waist. A few seconds. Looking down at the street at
24 a man apparently he hadn't seen before, that you're now asked to
25 identify 135 days later.

1 Members of the jury, I applaud you sincerely if any of you
2 can remember a single face you saw 135 days ago that isn't a
3 member of your family. I sure can't. I have no idea who I saw that
4 time. But they've had no interaction since then.

5 So why didn't Mr. Ramos ID him the first time? Because
6 he isn't sure. The only way he got to be sure was to sit right here
7 for 20 minutes and look at the guys at the table that says,
8 Defendant. He knows why we're here. We're here to try. He knows
9 it's not someone sitting here. I'm asking questions, so he knows it
10 isn't me. It's obviously not Kambi, he doesn't look anything like the
11 guy.

12 So what's the conclusion he comes to? Well, I've been
13 sitting here for 20 minutes. There's clearly something wrong here.
14 I guess it's the guy at the table I don't know. Must be that guy, he's
15 a white guy that looks kind of similar to someone I saw for a few
16 seconds a 135 days ago. That's the best thing the State can say in
17 this case.

18 But here's the problem with that. What the State wants
19 you to believe is that not only is that a good ID, which is it, but that
20 that man that walked and was caught on video. Let's talk about the
21 video then.

22 The video you just saw is a guy who's clearly white,
23 walking behind a fence, and that's it. Well, what you can tell when
24 you watch that video closely is that's a white guy, not a Mexican
25 guy, that he's not bald, and that he has facial hair.

1 So here's, then, what we're left with. The State has two
2 options when it comes to this video. Either that's Ted Donko or it's
3 the shooter. It cannot be both. And here's part of the reason why.

4 One, obviously, the description doesn't match. And two,
5 the timeline doesn't match. What we heard is 911 call,
6 immediately, officers respond 12:14 on the dot. When is the video
7 filmed? We asked the woman on the stand. 12:15, on the dot. Not
8 around 12:15. 12:15.

9 So the shooters have to shoot up a house, drive onto
10 Charleston, and I know Ms. Rose said everything can be
11 accomplished here in two minutes, but that sounds like someone
12 who hasn't driven on Charleston during the day. Drive up
13 Charleston, drive around the block, come to a different place,
14 apparently drop off the other passenger -- who, by the way, is the
15 one alleged to have done the shooting -- somewhere else, get in
16 front of Mr. Ramos's house, park, get out, pat himself down, walk
17 down the street a couple of houses till he's caught on video. And
18 that has to take 45 seconds. That's what that has to be. If that's the
19 shooter, that can't happen. That timeline is impossible.

20 So the other explanation is that's Ted Donko. What does
21 that mean? That Ted has a red shirt and lives in the area? We
22 know those things. We know Ted's not bald. We know he has
23 facial hair. We know he's not Hispanic. And we know that that's all
24 true at the time of the shooting. The State can't have this both
25 ways. Either he's the suspect or he's the guy in the video. Or the

1 guy in the video is the suspect and it isn't Ted. It has to be one or
2 the other. It's impossible for it to be the shooter or Ted. The video
3 doesn't actually add up. It adds nothing to the case.

4 And this is where the evidence starts to contradict itself.
5 What we have to do to believe the State's case is believe a video,
6 ignore the witness. Believe the witness, ignore the video. Ignore
7 the forensic evidence, believe the witness. Or vice versa. But that
8 doesn't work. That's not how the justice system works.

9 So what about that forensic evidence? Does the forensic
10 evidence actually put Ted Donko at the scene of the crime? No.
11 Not one piece of evidence in this case, be it the description of the
12 shooter or the fingerprints found or the DNA actually puts Ted at
13 the scene. The State sounds pretty sure it's him, but the evidence
14 doesn't actually tell us that.

15 What the evidence tells us, when we talk about the
16 fingerprints, is that Ted touched a license plate. That is literally all it
17 tells us. It doesn't tell us Ted touched the license plate that is
18 attached to the car that the shooter was apparently driving, because
19 that's not the license plate for that car. All it tells us is at some
20 point, and we don't know when, Ted Donko touched a license plate.

21 So what did he tell you today? He's a mechanic by trade.
22 That's it. That's all the State can tell us off the fingerprints is that a
23 mechanic might have touched a license plate at some point?

24 MS. GOODMAN: Your Honor --

25 THE COURT: Approach.

1 [Bench conference transcribed as follows.]

2 MS. GOODMAN: I knew 100 percent that that's what was
3 going to happen.

4 THE COURT: But we just talked about it.

5 MS. GOODMAN: I knew 100 percent that was -- and it just
6 happened.

7 MR. HAUSER: What?

8 THE COURT: We just talked about that.

9 MR. HAUSER: No, I specifically said I wasn't going to say
10 he was in the car, that he had worked on the car.

11 THE COURT: But I said [indiscernible] there wasn't going
12 to be any more [indiscernible] to his working on a car
13 [indiscernible] how his fingerprint would get on it. Because you
14 know that that's not how that happened. [Indiscernible.] And so
15 [indiscernible] you guys are going to get up there and argue that
16 that could have potentially been one of the cars he worked on or his
17 prints got on the license plate because that was a car he worked on,
18 that's exactly what you're inferring right now.

19 MR. HAUSER: I didn't -- I misunderstood your instruction.
20 I sincerely apologize I did that. I thought I wasn't allowed to say he
21 was working in on the car that was in the shooting. That's what I
22 thought they were opposing.

23 THE COURT: [Indiscernible.]

24 MR. HAUSER: Right. And I'm not saying he worked on
25 that car.

1 THE COURT: But you're saying that he worked on a
2 license plate within the car.

3 MR. HAUSER: Right, the car doesn't -- the car and the
4 license plate don't actually match. It's the other way [indiscernible]
5 that car.

6 MS. GOODMAN: And then you said he was a mechanic
7 that works on a car that touched a license plate. That is exactly
8 what you were barred from saying.

9 MR. LEXIS: He can strike his statement and just --

10 MR. HAUSER: Right. You can strike that. All clear now.

11 THE COURT: Just a bare minute and go on.

12 MR. HAUSER: Okay.

13 THE COURT: Do you want me to strike that?

14 MR. LEXIS: Yes.

15 THE COURT: Okay.

16 MR. HAUSER: Do you want me to clear it up or just
17 strike?

18 THE COURT: I'll just strike it.

19 MR. LEXIS: No, that's --

20 MR. HAUSER: All right.

21 [End of bench conference.]

22 THE COURT: Okay. In regards to the argument that was
23 just made about a mechanic having prints on a license plate in the
24 car, that is stricken from the record. You are not -- you are noticed
25 not to consider that a mechanic would have a fingerprint on a

1 license plate in a car. So everybody understands that
2 admonishment? All right. Everybody's nodding their head yes.

3 Carry on, please.

4 MR. HAUSER: Thank you, Judge.

5 What the fingerprint tells us is nothing. Doesn't put Ted
6 on the scene, doesn't put him in the car. Which leaves us, then,
7 with the last piece of evidence, the DNA. And DNA is like that
8 mysterious three-letter word that *CS* always throws around,
9 because, well, if there's DNA, someone has to be guilty, right? Like,
10 that's always how crime shows work.

11 That's not how real life works. So in real life, the DNA
12 only tells us someone touched an object at some point. That's what
13 we learned. And it doesn't actually mean that they're the only
14 people that touched it. What we heard from the DNA expert on the
15 stand was, well, not everyone that touched a shirt leaves DNA
16 behind. You can and you can't. How many people touched the
17 shirt in this case? We don't know.

18 We know that Ted did. We know that for a fact, because
19 they swabbed the places where people tend to sweat, like me.
20 Right here and under the arms.

21 But the thing is, if someone else's DNA is here or here,
22 logic tells us they also wore that shirt. That's what common sense
23 tells us. It doesn't tell us that they picked it up off the street or took
24 it out of a car and just left it somewhere. They had to actually wear
25 it.

1 So we know that the shirt that ties him to the shooting
2 wasn't only worn by him. And that's important. Who is this other
3 person? Was that person a Mexican shooter with no facial hair, no
4 tattoos, and a bald head? We have no idea. But the fact that we
5 can't answer those questions means we have doubts. And if we
6 have doubts, the State hasn't met its burden.

7 All of the evidence in this case leaves us with doubts. The
8 IDs are suspect or requires to ignore it. The video timeline does not
9 match or it is Ted and he walks away, because he's not guilty. The
10 fingerprint doesn't put him at the scene or pulling the trigger. The
11 DNA says it could have been someone else, or it means Ted lost a
12 shirt at some point.

13 Ted, the homeless guy who was living in the car that
14 didn't lock and got broken into lost a red shirt. That's all we really
15 know. That's all we know for certain.

16 And if you're expected to give an abiding convictions, I
17 would bet it can't be done.

18 Excuse me for just a moment. My voice seems to be
19 going after this, I apologize.

20 Let's talk about what evidence there isn't. What the State
21 wants you to believe is that Ted walked down the street, got caught
22 by Mr. Ramos, got caught by the cameras, walked around the
23 corner, ripped his shirt off, and then just walked home. Okay.

24 So what evidence would there be if that was true? Might
25 there be someone who's, like, Hey, who's that really tatted guy

1 walking down the street with no shirt on right after a shooting?
2 That person would exist. It seems like a neighborhood with a
3 bunch of cameras, because the detective even [indiscernible] that
4 didn't produce footage.

5 Might there be a video of a shirtless Ted Donko walking
6 down the street? There might. But there isn't. Because that didn't
7 happen. Might there be fingerprints on those bullets? Might there
8 be DNA on those bullets? Yeah, there might.

9 And I understand what they're saying. Everybody's said,
10 well, we don't run those tests, it's just standard policy that we don't
11 do that. But here's the thing. It's easy to say that when we're
12 talking about, well, the budget doesn't allow us to do it. That's
13 because the only thing on the line for them is their budget.

14 But when it's your life on the line, when you're sitting here
15 staring down the barrel of an attempt murder with deadly weapon,
16 seven felony charges, you want them to run those tests. You don't
17 care if it's the budget. You want those results. Ted would love to
18 be able to come up here and tell you, My DNA's not on those
19 bullets, my fingerprints aren't on those bullets. But he can't,
20 because they didn't run the test. And he can't run it himself.

21 What other evidence are we missing? We heard there
22 were a lot of people at the house when there was a shooting. We
23 heard there were at least two other people there that the officers
24 described as Hispanic, and who described the shooters as Hispanic
25 males. Where are those people? Wouldn't it be nice to know why

1 they thought the shooter was Hispanic? Wouldn't it be nice if you
2 got to hear from them? Wouldn't it be nice if we got to question
3 them? Yes. But we don't get to.

4 So all we have left is the limited contradictory evidence
5 we have before us. He's on the video or he's not the shooter. The
6 fingerprint matches or it doesn't actually put him at the scene. The
7 DNA is his, unless, of course, it isn't, which they admit to. The ID is
8 him if we ignore the ID. This is all they have to rely on. It's all the
9 State has.

10 And they want you to meet the highest burden in the land
11 with contradictory and flimsy evidence. With so much on the line.
12 With so much at stake for Ted. That simply isn't enough.

13 Now, Ms. Rose made a big deal about witnesses on the
14 stand being nervous, and maybe that's why the ID was a little
15 weird. You know who else was nervous up there on that stand?
16 Ted. He's got more reason to be nervous than anybody in this
17 courtroom. He's the one that has something to lose, none of the
18 rest of us do.

19 And he wasn't forced to take that stand. No. Every other
20 witness here, you heard the judge say, You're released from your
21 subpoena. They were required to be here, that's why they were
22 here.

23 Ted, specifically, has a constitutional right not to get on
24 that stand. He doesn't have to submit to questioning. You didn't
25 have to find out he's a felon. He didn't have to try and explain

1 himself, because that's not the system we live in.

2 But he wants to defend himself. And he has done every
3 single thing in his power to do that. No, we don't have footage of
4 him at the Sonic. Because you can't defend yourself against an
5 allegation you don't know is coming. If I ask any of you or if you
6 ask me, can you tell me where you were at noon 45 days ago? And
7 then can you prove it? Almost certainly not. That's not how we live
8 our lives. We're not always prepared for an accusation to come our
9 way at any given time.

10 So I want you to think very critically about the evidence
11 we have before us. About the Mexican man with no tattoos who
12 committed this crime. Because, members of the jury, you've seen
13 Ted's tattoos. You're going to have the pictures yourselves. And if
14 someone came up and held a gun with an arm that looked like that
15 in what we know is a short-sleeve shirt with nothing else on under
16 it, we'd have heard about it. We hear anything about tattoos. But
17 Mr. Woods said no tattoos, Mr. Ramos said no tattoos. No witness
18 saw anyone with tattoos anywhere in this case. But Ted's had
19 these since 2011.

20 Members of the jury, we've done everything we can. And
21 this is where I'm done. I don't get to come up here and talk to you
22 again. Mr. Lexis is going to get up and he's going to disagree with
23 everything I'm saying right now by telling you that my theories are
24 outlandish or even ridiculous.

25 But what I want you to think about is that the State is

1 consciously asking you to ignore evidence. And try and answer
2 these questions: Which witnesses am I supposed to ignore in order
3 to believe he did it? Which evidence do I get to disregard that says
4 he didn't do it in order to believe he did? Why should I have to
5 believe the forensic evidence or the ID? Because you can't believe
6 both.

7 Members of the jury, this case is very simple. I'm not up
8 here talking about technicalities. I'm not up here talking about
9 elements. There's no ifs, ands, or buts about it, a crime was
10 committed. These men suffered immense pain, because they were
11 shot by a Mexican man with no tattoos, no facial hair, and a bald
12 head.

13 Ted Donko is not that man. I ask you to find him not
14 guilty on all charges. Thank you.

15 THE COURT: Thank you, Mr. Hauser.

16 Ladies and gentlemen, how are we doing? Do we need a
17 quick break before the last -- yes, okay. So yeah. All right.

18 So during the recess you're admonished not to talk or
19 converse among yourselves or with anyone else on any subject
20 connected to this trial or read, watch, or listen to any report of or
21 commentary on the trial of any person connected with this trial by
22 any medium of information, including, without limitation to
23 newspapers, television, the Internet, and radio, or form or express
24 any opinion on any subject connected with the trial until the case is
25 finally submitted to you.

1 Let's be back at 10 till 4:00. All right? Thank you very
2 much.

3 [Jury recessed at 3:38 p.m.]

4 THE COURT: All right. We're outside the presence.
5 Anything?

6 MR. SHAYGAN-FATEMI: Not from the defense.

7 MR. LEXIS: No, Judge.

8 THE COURT: All right. So we'll go off.

9 [Court recessed at 3:39 p.m., until 3:53 p.m.]

10 [In the presence of the jury.]

11 THE COURT: All right. Thank you. We're back on the
12 record is C-345584, State of Nevada versus Ted Michael Donko. He
13 is present with both of his counsel, Mr. Hauser and Mr. Shaygan.
14 Both deputy district attorneys are also present.

15 Do both sides stipulate to the presence of the jury?

16 MR. LEXIS: Yes, Your Honor.

17 MR. HAUSER: Yes, Your Honor.

18 THE COURT: All right. Mr. Lexis.

19 **SURREBUTTAL CLOSING ARGUMENT FOR THE STATE**

20 MR. LEXIS: Folks, with 2 million peoples in Clark County,
21 when you have a case where somebody's being picked out of a
22 six-pack photo lineup, backed by the 2- or 3,000-pound elephants in
23 the room called DNA and fingerprints, we do this, right? And this.
24 Blame the cops, you blame the victims. Do it all you want, it
25 doesn't change the facts. Okay.

1 It's the victims' fault that they're placed in a situation
2 where they're met -- DeAndre's met the first day with what? It's an
3 ultimate play. Guys trying to front, threatening him with a weapon.
4 Second day even more so. Even quicker, actually shooting. But it's
5 his fault, right, that he mistakes him for a Hispanic individual.

6 We can talk about how it's possible and speculate as to
7 why he initially thought he was Hispanic all day long. That's not
8 reasonable doubt, let's do that.

9 Then blame the police, right? It's the police's fault. They
10 could have done this, this, and this. Once again, folks, in every case
11 we can go around the wheel of possibilities and speculation on
12 what they could -- police could have done, should have done.
13 That's not reasonable doubt either.

14 Plus, he wants to harp on the fact, well, they had -- how
15 about the shell casings, the fingerprints, and DNA on the shell
16 cases? Well, as the CSA told you, that stuff's burned off when it's
17 fired. In addition, it's not Metro's policy to test such items due to
18 the unreliability.

19 Now, folks, you don't need me to tell you in this type of
20 case, when you're dealing with this type of neighborhood and this
21 type of crime, it is a luxury to have any victim come forward who is
22 both able to identify and willing to identify.

23 Not only do you have that in this case with DeAndre, you
24 have this with Mr. Ramos. You could cut the tension in the
25 courtroom with that man, how nervous he is, doesn't want to be

1 here, scared. But he eventually comes around.

2 Let alone DNA evidence and fingerprint evidence. Which,
3 as you saw, that's no guarantee in any case. You saw the amount
4 of prints that were lifted off that car. And only one of them had a
5 viable amount, was a viable hit, good enough to test it, good
6 enough to run through this national database of AFIS, which comes
7 back to not only that man, and it's one of your questions that asked,
8 Well, how rare is it? Well, ask you heard, your identical twin
9 doesn't even have it.

10 Let alone DNA evidence. It's a luxury in these type of
11 cases to have one of the four. In this case, you have all of them.

12 Folks, I took notes during defense counsel's opening
13 statement. And the whole basis of that opening statement was
14 what? That the State is trying to convict this man on a 95 percent
15 identification, and that's it. Is that true? If you want to talk about
16 numbers --

17 MR. SHAYGAN-FATEMI: Objection, Your Honor. That
18 misstates the opening.

19 THE COURT: I'm sorry, that misstates what?

20 MR. SHAYGAN-FATEMI: My opening argument.

21 THE COURT: Okay. So what I'll say, ladies and
22 gentlemen, is it's up to you to look at your notes or to rely on your
23 memories in regards to what was actually said. As I've stated
24 before, arguments by counsel are not evidence. But you can look at
25 your own notes and your own memory, consider that. Okay?

1 MR. LEXIS: Direct quote from what I wrote down:
2 Prosecuting relying only on 95 percent identification. Folks, is that
3 true? Part of it. First of all, as you heard that man say, we asked
4 him, what would have made it 100 percent? And he said the man's
5 hair was -- if that hair was shorter from that six-pack photo lineup.

6 Folks, you're going to have the video surveillance and
7 these still photos. It's one of your questions that actually brought
8 them into evidence, 235. First of all, you surely can tell how long
9 any facial is on this man. And if it is, if he does have any facial hair,
10 it's extremely minor.

11 But what you can tell, folks, is you'll see, you'll have this
12 photo, you'll have the other photos, you could see, his hair is so
13 short on top you could see the glare from the sun shining off his
14 head.

15 Add that to the fact that in court, he's asked, you know,
16 Look at him; is that your man? Is he the one? Is he the shooter?
17 What's he tell you? I'm sure.

18 Add that to the fact, again, relying on only a 90 percent
19 identification? Hardly. Add that to Mr. Ramos and his
20 identification, which just happens to corroborate this man picked
21 out of a six-pack photo lineup, who they both identify in court. Oh,
22 no, what a coincidence.

23 You can't argue with the numbers with fingerprints and
24 DNA. There's no way around it. That is actual evidence, folks.
25 That's not based on possibilities and speculation. And I'm going to

1 use that word several times. But again, to speculate as to, you
2 know, he got his race wrong. Speculate as all the cops could have
3 done this. It's possible this. That is not reasonable doubt.

4 Before I move on, I want to bring up one of the jury
5 instructions. I'm going to go over several in my PowerPoint. But,
6 obviously, I didn't have time after the defendant took the stand.

7 Folks, one of your jury instructions basically says:

8 If you believe that a witness has lied about a material fact
9 in the case, you may disregard the entire testimony of that
10 witness or any portion of his testimony which is not proof by
11 any other evidence.

12 Let's talk about Mr. Donko's testimony. Right off the bat,
13 the main -- talk about material facts, it's the main part of all the --
14 everything he said. Do you know about the shooting that happened
15 down the street? No.

16 Then what did the detective tell you? When presented
17 with the evidence that they had, fingerprint and the card, he said,
18 Oh, yeah, I've heard about the shooting. Yes, I know about it.

19 How about this whole thing, the first day Shorty, the
20 second day, Shorty. Again, so Mr. Donko, did you mention that you
21 knew a Shorty to the detective? No. What does the detective say?
22 He asked him that question and he initially denied it.

23 MR. SHAYGAN-FATEMI: Objection. That misstates the
24 testimony, Your Honor.

25 THE COURT: In regards to whether or not -- you're talking

1 about the testimony or what's in the statement?

2 MR. SHAYGAN-FATEMI: The testimony.

3 THE COURT: And what were you discussing?

4 MR. LEXIS: Judge, when the detective was on the stand,
5 he was asked, Did you confront this man? Did he -- did you ask him
6 if he mentioned Shorty? He said no. Did you confront him again
7 with additional evidence? Yes. Did he change? Yes.

8 THE COURT: Approach.

9 [Bench conference transcribed as follows.]

10 THE COURT: What is your memory, when you say that
11 misstates it, what did you --

12 MR. SHAYGAN-FATEMI: A moment of indulgence.

13 THE COURT: Sure.

14 MS. GOODMAN: Just to be sure, we're talking about
15 Detective Marin, and that was one of the main points.

16 THE COURT: That's why I [indiscernible].

17 MR. LEXIS: Shorty, Shorty Dog, and then Shorty.

18 MS. GOODMAN: Yeah.

19 MR. HAUSER: We may be [indiscernible] and I apologize.
20 I'm not trying to --

21 THE COURT: Okay.

22 MR. HAUSER: -- mislead. My understanding of it was he
23 said I did say I knew Shorty. He's not saying I said it on the first
24 time, but he's saying I knew Shorty. The State was asking about
25 the first time, and that's why there was contradicting testimony

1 between Mr. Lexis's questions and --

2 THE COURT: I understand what we're talking about. But
3 he's talking about what was said to Detective Marin. Not what your
4 client has --

5 MR. HAUSER: We thought he was talking about the
6 testimony on the stand.

7 THE COURT: And you're talking about his statement,
8 right?

9 MR. LEXIS: His statement to the detective.

10 THE COURT: Yeah.

11 MR. HAUSER: Got it.

12 THE COURT: Got it?

13 MR. HAUSER: Got it.

14 THE COURT: Okay.

15 MR. SHAYGAN-FATEMI: Yep. Thank you.

16 MR. HAUSER: Thanks, Judge.

17 THE COURT: Yeah, no problem.

18 [End of bench conference.]

19 THE COURT: All right. The objection is overruled.

20 MR. LEXIS: Thank you, Judge.

21 Again, Detective asks him, Do you know Shorty? No.
22 Presses him with more evidence. Know a man named Shorty? Oh,
23 I know a man named Shorty Dog. Then loops back again, Yes, I
24 know Shorty.

25 Folks, first of all, you know now the reason he took the

1 stand. Okay. And it's pretty obvious, using your common sense.
2 He wants a reason, right, why -- to provide by this DeAndre guy,
3 who's pointing him out. So he has to come up with a reason.

4 First of all, ask yourself, do you believe this guy is giving
5 you some Academy Award winning performance up here with
6 regard to DeAndre Wood? Hardly. If he was trying to really play
7 this up, to bury this man, he could have done a lot better job. From
8 the very beginning, Yeah, Detective, 100 percent, that's the man. In
9 court, you going to sit here and stare at him when asked, Is that the
10 guy? No. He's going to say, That's your man.

11 But instead, he catches himself in another lie. Right? I
12 asked the detective. He told me on the stand -- Defendant told me
13 on the stand that, Yeah, I told him I knew DeAndre.

14 What did the detective tell you? Not only did he never
15 mention it, but there was no link in the entire investigation that
16 these two knew each other. Period.

17 But, you know, you want to take the stand and get that
18 out, and then you're subject to everything else. It's the first two
19 points I got across.

20 And then what else did he get tripped up on? Well, no, I
21 told the detective it was an older model beat-up four-door sedan,
22 and I was the passenger. I just -- he didn't confront me with
23 everything, I told him that. And, by the way, it was an Audi now.
24 What did the detective tell you? He didn't reveal that until he
25 informed him several times with, Oh, well, we got your print inside

1 a car.

2 He kept him talking until he finally revealed what? Out of
3 all the things you could say about the vehicle, he mentioned an
4 older model vehicle, four-door sedan, beat up, and to top it off, that
5 he was the passenger.

6 Red shirt. Gives no viable explanation of a red shirt. Oh,
7 broken out of my car. Okay, what day, sir? Uh, uh, uh. Yeah. And
8 it just so happens it's neatly placed there. No tire marks, not wet,
9 nothing else. Found minutes after the shooting.

10 MR. SHAYGAN-FATEMI: Objection. That's burden
11 shifting, Your Honor.

12 THE COURT: Overruled. It's just argument.

13 MR. LEXIS: And then the fingerprint, same thing. No
14 viable explanation. Found in this unregistered vehicle. And may I
15 point out on the most damaging, damning and damaging piece of
16 evidence in that vehicle, a license plate which is off the unregistered
17 vehicle, again, found minutes after the shooting.

18 Defense counsel then wants to come up here and talk
19 about, well, when the first responding officer showed up, the
20 description was Hispanic from these people. Yeah. He had two on
21 the ground. He told the others were reluctant, fearful.

22 And what did DeAndre say? These people got the
23 descriptions from him. They were in the house. He went in and
24 basically -- when they came out and told them the description,
25 they're the ones that called 911. But it's their fault, right? It's their

1 fault.

2 MR. HAUSER: Objection, Judge. Misstates the testimony.
3 Could we approach?

4 THE COURT: Sure.

5 [Bench conference transcribed as follows.]

6 MR. HAUSER: Judge, I don't recall the testimony that
7 DeAndre actually went in the house and provided a description. I
8 recall the testimony that there were four people outside, one of
9 whom was Edgar Miller, who didn't testify. And then one was the
10 woman who called 911. I don't believe she was outside.

11 THE COURT: [Indiscernible] ask DeAndre [indiscernible]
12 ask DeAndre about where did she get that information? He said she
13 was always inside, I told her.

14 MR. HAUSER: I don't recall the testimony about him
15 going in the house in any way. He specifically said he ran and hid
16 behind the fence.

17 THE COURT: But yesterday, at the end of DeAndre's
18 testimony, Ms. Goodman asked him where did she get that? And
19 he said she got her information to me.

20 MR. HAUSER: Right, but that part --

21 THE COURT: From me.

22 MR. HAUSER: Right, right. That part I remember. The
23 problem is we're talking about multiple witnesses describing them
24 as Hispanic. We're not saying it was just her. The officer testified --

25 THE COURT: Yeah, I know. She --

1 MR. HAUSER: -- that the Hispanic witnesses said it was
2 Hispanic people.

3 THE COURT: Right. But that's not what she's talking
4 about right now in regards to DeAndre said. They're talking about
5 just the 911 call right now. That's what he's talking about.

6 MR. HAUSER: Okay.

7 THE COURT: The 911 callers, talked about that
8 information.

9 MR. HAUSER: Got it. If we're just talking about that, I'm
10 good.

11 THE COURT: Yeah.

12 MR. HAUSER: All right.

13 [End of bench conference.]

14 THE COURT: Objection's overruled.

15 Continue.

16 MR. LEXIS: Thank you, Judge.

17 Information provided to CAD, as you heard, 911 provided
18 by DeAndre to these people.

19 Then Defense counsel wants to come up and tell you,
20 Well, the timeframe. Well, everyone says it's around 12:15. The
21 only person that really gives you a definitive timeframe as far as
22 when the shooting happens and when the car is seen is Mr. Ramos,
23 who told you what? A couple minutes.

24 MR. SHAYGAN-FATEMI: That misstates the testimony.

25 MR. LEXIS: Absolutely not.

1 MR. SHAYGAN-FATEMI: The surveillance that he said
2 specifically gave a specific time. I'll submit it.

3 MR. LEXIS: Around 12:15.

4 THE COURT: All right. Overruled.

5 Continue.

6 MR. LEXIS: Okay. Once again, folks, surveillance lady
7 said around 12:15 and so did everyone else as far as officers. The
8 only one giving you --

9 MR. SHAYGAN-FATEMI: Not around, she said 12:15.

10 THE COURT: Okay. So you will rely on your notes, and if
11 you need to play back the certain testimony, we can get that to you.
12 Okay?

13 Continue.

14 MR. LEXIS: Okay. Once again, the surveillance lady didn't
15 tell you she heard the shots. I don't care if it's 12:00, 12:15, or 12:20.
16 The only person that gave you a timeframe with -- when the shots
17 were fired and when that car was up here was Mr. Ramos. Which
18 absolutely matches the evidence.

19 So, folks, at the end of the day, what's -- what does this
20 leave defense counsel? Well, it leaves them to talk about
21 possibilities and speculation. Okay. Right? The race. Is it possible
22 he got the race wrong. Speculate as to why he got the race wrong.
23 The tattoos. You know, it's possible he looked at the tattoos,
24 speculating as to why he's not paying attention to the tattoos.
25 Folks, use your common sense. Think about how this situation

1 arose. Folks, I'm not going to harp on all this -- what's already been
2 brought over. But, again, you have a jury instruction that says use
3 your common sense. You must bring to the consideration your -- of
4 the evidence your everybody common sense as reasonable men
5 and women.

6 In addition, an instruction that hasn't been gone over with
7 you is motive. Folks, the law doesn't require the police to be mind
8 readers, the prosecution to be mind readers, or you to be mind
9 readers. Why he did what he did is not an element of the crime.
10 Why he did what he did after the shooting isn't an element of the
11 crime.

12 Motive is not an element of the crime charged and the
13 State is not required to prove a motive on part of the defendant in
14 order to convict. However, you may consider evidence of motive or
15 lack of motive as circumstances in this case.

16 So let's think about it. You know, again, State doesn't
17 have to prove any of that, prove motive. But does it make sense of
18 what's going on? If there was some clinic on shoot-to-kill drive-by
19 shootings, how did he do initially? Well, your common sense tells
20 you he scoped out the area, came and announced who he's looking
21 for. Did a good job, kept it quick, right? Kept it violent. Acted like
22 he was going to do something.

23 But then he starts getting sloppy the second day, right?
24 Shows up. Probably not a good idea to show up in a red shirt
25 again. Probably not a good idea to yell out, Shorty, again.

1 But the execution, pretty good, right? Kept it quick, kept it
2 to the point, pop off those eight rounds, and took off. Did that
3 what, but now he really gets sloppy, which is not surprising. Right?
4 Now you've got the cops coming. Now, you'd better not get caught
5 or you're going to be sitting right there. Right.

6 So what's he do? You've got to admit you've got to weigh
7 the risks, right? Is he going to take -- the cops probably got a
8 description, right? Is he going to take this car and keep driving it on
9 main streets with it? No. Your common sense tells you no.

10 Does a good job with dumping one of the people in the
11 car. By the book. It's a good job. But then what? If you're going to
12 dump the car, obviously, he doesn't want to stay in the car. You're
13 going to dump it in some location you don't know the area? Are
14 you going to dump it in the location you do know? Obviously, you
15 know that.

16 So he dumps the car, right? But by doing that, you take a
17 risk. You're going to -- might leave evidence behind. He almost got
18 away with it, right? Fingerprints is no guarantee. But again,
19 evidence was found on the most damning piece of evidence in that
20 car. The license plate off the car. Unregistered vehicle. Blocks
21 from the location.

22 But now he's stuck with an even bigger risk. Cops are
23 coming, right? He decided to dump that car close to the crime
24 scene. Still got that red shirt on. Is he going to risk walking to his
25 house? It's only a little bit away. Can't help himself. Doesn't want

1 to get caught, so he dumps it.

2 Did he win the battle? Yeah. Did he make it home? Yeah.
3 But did he win the war? Not even close. Left a trail of evidence
4 behind, which there's no way out.

5 Folks, there's two ways to go about these type of cases.
6 One is self-defense. When you pop off eight rounds in a drive-by
7 against a bunch of unarmed people with men, women, and children
8 inside a house, that's out the door. So you only have one play left,
9 which is what? Identification.

10 Folks, is it surprising to you, in these type of situations,
11 that you have people reluctant to testify? I went over this in voir
12 dire jury selection for a reason. And again, you're able to bring in
13 your past and common sense and experiences to that jury
14 deliberation room.

15 Think about where this happened. Think about the way it
16 went down. Fear absolutely comes into play. Most people want no
17 part. Some people you can't even find. Does Defense counsel harp
18 on that? Absolutely. Because it's easy for some people to look at
19 Fernando. Oh, okay, buddy, you got shot in the stomach? Got shot
20 in the arm? And you don't want to testify, and you're a felon? I
21 don't care. You don't care, I don't care. Is that justice? Absolutely
22 not. Does that happen all the time? You'd better believe it.

23 Tattoos, race inconsistencies. Once again, you got to
24 think of the nature of these interactions, folks. The nature of these
25 interactions. In fact, you saw an exchange. Defense came out at

1 Mr. Woods 10 different ways to ask him, Oh, you mean to tell me
2 you weren't only paying attention to his face? His eyes? His eyes?
3 His eyes? Eventually, what did he tell them? He started getting into
4 an exchange. Well, have you been in this type of situation?

5 First interaction, don't know the guy threatening, thought
6 he had a gun, thought his life was on the line. Second day, you
7 know what happened.

8 Once again, fear in the situation. And you know what, I
9 also want to point out, folks, when Defense counsel kept pressing
10 this man, pressing this man, when he said, you know what, so you
11 mean to tell me you're just looking at his eyes? Yeah, yeah, yeah,
12 yeah, yeah. Then he came at him with what? Okay, then, Mr.
13 Woods, tell me, what color's his eyes? You have a photo of his
14 eyes, folks. You tell me if he got it wrong. Blue.

15 And, folks, you know, a couple of last points on this. If
16 someone came busting in that door right now, let's say he was a
17 man, Hispanic man, tattoo, mustache, short hair, came in and just
18 start whaling on that correction officer right there, no time to -- no
19 negotiation, no talking, just start whaling on him. And I asked
20 for 14 voluntary statements. Do you think everybody's going to
21 have the same statement? Some would say, We got him, came
22 through the left door, the right door, maybe he it was a push that
23 knocked him down, maybe it was just a punch, maybe it was a fist.
24 Some would have no idea about any mustache. Some would
25 totally get it wrong. Race, we go on, on, and on. Think about the

1 situation that these men were placed in.

2 Last point with regards to this aspect. Folks, I want you all
3 to think about a painting. Okay. One of the most paintings in the
4 world. And when people are looking at a painting, they are trying
5 to pay attention to detail. That's the whole picture -- the whole
6 point of looking at some painting, world famous painting, right?

7 And when most people are looking at this stuff, they're
8 not being threatened with any physical violence, nor are they
9 getting shot at. But ask yourself, if I asked all of you to write
10 voluntary statements in detail and tell me the Mona Lisa, is her hair
11 parted to the left or right? Is her hair behind her shoulders or in
12 front of her shoulders? Is it a right profile or a left profile? Is her
13 hands off to the right or to the left? Are they crossed or not
14 crossed? Is her necklace high above the neck or down below? And
15 if so, is there a pendant on it?

16 What about behind her? Is it a mountain range,
17 grassland, or a lake? Is her skin complexion darker or lighter? Does
18 she have a dress on? If so, is there anything over her dress? Is it
19 long-sleeve or short-sleeve?

20 Folks, you get my point. I would have 14 different
21 statements from people that were looking at a painting under no
22 stress. But yet if I put up a picture of the Mona Lisa, you'd be quick
23 to say no question, that's the Mona Lisa.

24 Folks, I want to point out direct and circumstantial
25 evidence. This instruction is one of the only instructions the judge

1 told you at the beginning of this trial and at the end of the trial. And
2 the only one she gave you an example of. Remember the rain
3 example. If you see it's raining, direct evidence. Get up in the
4 morning and see the street's wet, feel it: Circumstantial evidence.

5 Direct evidence is testimony of a person who claims to
6 have personal knowledge of a crime, such as an eyewitness. Do we
7 have cases like that? Absolutely. With no circumstantial evidence?
8 Yeah. Sometimes we have cases with just circumstantial evidence,
9 proof of a chain of facts and circumstances which tend to show
10 whether the defendant is guilty or not.

11 As I asked you in voir dire, jury selection, whether or not
12 when you have -- we just have one witness to say, Oh, yeah, that's
13 the person, direct evidence.

14 Circumstantial evidence, you know, you come home,
15 house is ransacked, and sure enough if you find a Coke bottle in
16 your trash can, you're, like, I don't know. I didn't drink a Coke
17 recently. Sure enough there's a fingerprint on it. Or there's DNA
18 evidence on it. Do we get a lot of cases like that? You'd better
19 believe it.

20 All you need is direct -- you could convict somebody just
21 with direct evidence or just with circumstantial evidence. In this
22 case you'd better believe you have both.

23 The point, folks, the law makes no distinction between the
24 weight to be given to either direct or circumstantial evidence.

25 Therefore, all the evidence in the case, including the circumstantial

1 evidence, should be considered by you in arriving at your verdict.

2 Folks, let's just say all we had is direct evidence in this
3 case. If all we had was Mr. Woods and Mr. Ramos, you'd better
4 believe we would be right here telling you that's your man.

5 DeAndre, 90 percent ID of a six-pack -- out of a six-pack
6 photo lineup. But for the hair was too long. He says if he was
7 shown a picture of the hair, it would have been 100 percent.
8 Identifies the defendant at a prior hearing and now a trial, says I'm
9 sure. And he identifies the prior interaction based on height, build,
10 Shorty, the red shirt, and his eyes. And, of course, identifies the
11 vehicle as a gray older Toyota Corolla.

12 Just so happens, two minutes later, two blocks away,
13 Mr. Ramos hears -- first hears shots, two minutes later sees an
14 older model Toyota Corolla that matches the description driving
15 aggressively. Defendant that exit's a red shirt. Tells you he's
16 immediately suspicious of not only his driving conduct, but -- and
17 by his behavior on how he's grabbing his waistband and looking
18 around. Only person in the vehicle with no license plate. And, of
19 course, then, IDs in court.

20 You better believe if that was the only evidence we had,
21 you think we would have cut this man loose? No chance.

22 Now, folks, I'm going to talk about flight. The law realizes
23 that when you're dealing with criminals, they're going to flee the
24 scene. And evidence is going to disappear. And what are they
25 going to claim? Oh, it's not me.

1 The law realizes you're going to have situations like
2 DeAndre, like the other witnesses involved, where fear's going to
3 come into play. People are going to mischaracterize and get
4 [indiscernible] in possibilities and speculation again on why they
5 thought somebody was a different race. Evidence, like I said, is
6 going to disappear. It's going to be harder than if the man just
7 stayed at the scene.

8 The law realizes that, and the law also states that the
9 defense should not be able to use that as a sword. In fact, it's the
10 exact opposite. Your jury instruction says:

11 The flight of a person immediately after the commission
12 of the crime is not sufficient in itself to establish guilt, but is a
13 fact which, if proved, may consider by you in light of all the
14 other proved facts in deciding the question of his guilt or
15 innocence.

16 So, you know what, why don't we for a second
17 completely -- let's say DeAndre from the get-go said, you know
18 what, couldn't pick him out of a six-pack lineup. Zero percent. Oh
19 no. And Mr. Ramos said, you know what, I don't know. Can't
20 identify him. What would the evidence be?

21 Let's just go with the circumstantial evidence, forget about
22 the direct. What have we got? DeAndre identifying the prior
23 interaction based on height, build, and Shorty. And a red shirt.
24 Identifies the vehicle as a gray older Toyota Corolla. Identifies the
25 red shirt. And not only that, the passenger being the one with the

1 red shirt, the shooter.

2 Fernando also states what? You heard the detective, at
3 the hospital, says a gray older model Toyota. And the shooter
4 being a passenger.

5 Let me point something out with Fernando again, as well,
6 as far as this statement. Folks, if you think about a statement made
7 immediately in time after somebody is shot, what's your common
8 sense tell you? People are, obviously, are in fear, scared of
9 retaliation, don't want to be here. They have the time to think about
10 all that when they're laying on the ground with a bullet in their
11 stomach. Or on the gurney in the hospital when the detective asked
12 him, Oh, can you describe what you saw? What does he say? Gray
13 older model Toyota and the shooter's a passenger. Absolutely
14 consistent with everybody else.

15 Jonathan, older model Toyota, shooter the passenger.

16 Genaro, Mr. Ramos, couple minutes after hearing the
17 shots, just so happens to see this older Toyota Corolla that matches
18 the general description driving aggressively. It exits in a red shirt,
19 suspicious behavior. Again, only person in the vehicle, no license
20 plate, and what's his direction of travel, folks? What -- another what
21 a coincidence. It's towards his residence.

22 The crime scene analysts, just so happens that car with
23 his DNA on it two minutes after the event, driving aggressively,
24 exiting aggressively, who he identifies in court, just so happens
25 those eight spent cartridge casings of S&W, Smith & Wesson .40

1 cal -- .40 cal's are also consistent with what is in that vehicle two
2 blocks away.

3 Video of a neighbor absolutely corroborates both
4 DeAndre and Mr. Ramos. Red shirt, general height, build, body,
5 language, very short hair. Direction of travel, again, corroborates
6 the northbound direction, which is, again, towards his residence.

7 Folks, again, is that all we have as far as circumstantial
8 evidence? No, it gets better, right? Now we get to
9 those 3,000-pound elephants in the room. That car just so happens
10 to have his prints on the most damning piece of evidence in that
11 car, and a shirt in the same direction, a block away, towards his
12 residence.

13 Is that all you have to rely on? No. Again, if you include
14 all that and the direct evidence. The law makes no distinction to be
15 given to the weight of direct or circumstantial, therefore all of it --
16 all of it, folks -- is to be considered.

17 Folks, the evidence that you heard from this case comes
18 from right here. The evidence which you are to consider in this
19 case, the witness of the testimony, the exhibits, and any facts
20 submitted are agreed to by counsel. There's nothing from this
21 evidence that is actual that you could grasp onto and says, you
22 know what, yeah, yeah. It is a Hispanic man with tattoos -- or no
23 tattoos. No. Without engaging in possibilities or speculation, there
24 is nothing actual from this stand that you could grasp onto
25 corroborates and says, Yep, man had no tattoos, man was Hispanic.

1 The only way you get there is engaging in possibilities and
2 speculation.

3 That's possible you don't need -- wasn't looking at the
4 tattoos, like he told you. It's possible they misidentified the race
5 when looking at -- speculate as to what -- why he was looking at
6 just the face. Folks, that's not my stand on the law. That is the law.

7 A reasonable doubt is one based on reason. It's not
8 mere possible doubt, but is such a doubt as would govern or
9 control a person in the more weighty affairs of life. If the minds
10 of the jurors, after the comparison of all consideration of the
11 evidence are in such a condition that they can say they feel an
12 abiding conviction of the truth of the charge, there is not a
13 reasonable doubt. Doubt, to be reasonable, must be something
14 actual, not mere possibilities or speculation.

15 The State of Nevada asks that you hold this man
16 accountable for his actions and find him guilty of attempt murder
17 with a deadly weapon, two count -- or, excuse me, three counts
18 battery with use of a deadly weapon resulting in substantial bodily
19 harm, two counts assault with a deadly weapon, and discharging a
20 firearm at or into an occupied structure. Thank you.

21 THE COURT: All right. Thank you, Mr. Lexis.

22 All right. Ladies and gentlemen, the clerk will now swear
23 in the officers to take charge of the jurors and the alternate jurors,
24 please.

25 [Officers sworn.]

1 THE COURT: All right. So as you know, a criminal jury is
2 comprised of 12 individuals, not 14. So two of you are alternates.
3 The alternates in this case are Number 13, Shelley Bush, and
4 Number 14, Tamara Jacquez.

5 You are not excused from jury service at this point in time.
6 The other 12 are going to go back into the room and deliberate. I
7 just need you to go back with them and leave all your personal
8 information, because if someone falls sick or someone isn't able to
9 come, that means one or both of you would have to come in and
10 step in. So, please, you're still under the same admonishment that
11 you've been under. You are just going to be allowed to go home
12 unless you hear from us. All right?

13 So my marshal is going to take all 14 of you to the jury
14 deliberation room. And then if you could get the information, the
15 contact information for the two alternates, all right?

16 THE MARSHAL: Yes, Your Honor.

17 THE COURT: Thank you.

18 [Jury recessed for deliberations at 4:31 p.m.]

19 THE COURT: All right. So the jury's gone back. I imagine
20 they'll just probably pick a foreperson tonight and go home, since
21 it's 4:30. But for some reason, if they would like to stay and
22 deliberate, we will let them do so. So we will contact you if they
23 decide to go home.

24 MR. SHAYGAN-FATEMI: Your Honor, my client's
25 expressed to me that he'd like to stay with us. If we think that we're

1 going to have a decision by 5:00, is it okay if he stays with us? Or
2 Your Honor's call on that, obviously.

3 THE COURT: So, to be honest with you, it's really not my
4 call. It's the corrections officer's call.

5 And I believe at 4:30, there's a shift change and you guys
6 have to transport, right?

7 CORRECTIONS OFFICER: Yes, ma'am.

8 THE COURT: Okay. So I'm sorry, we're not going to be
9 able to do that. And honestly, I don't think they're going to
10 deliberate tonight. I think they're probably just going to pick a
11 foreperson and go home.

12 MR. SHAYGAN-FATEMI: Okay.

13 THE COURT: So I will -- obviously, if they have a decision,
14 you'll be brought back up by different corrections officers. And if
15 they decide to go home, we will let everybody know.

16 So just leave your contact information with my clerk.

17 MR. SHAYGAN-FATEMI: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. HAUSER: If they do choose to stay, how late do you
20 keep them?

21 THE COURT: On a night like tonight, where we're just
22 starting, I usually don't keep them past 6:00.

23 MR. HAUSER: That makes sense. And what time would
24 you like him back here, just so we all know?

25 THE COURT: I'm going to let them choose. I wouldn't let

1 them choose later than 10:00. But --

2 MR. HAUSER: That makes sense. Yeah.

3 THE COURT: -- if they want to come in earlier, that's fine.
4 But I'm not going to let them choose later than 10:00 a.m.

5 MR. HAUSER: Cool.

6 THE COURT: All right?

7 MR. HAUSER: Thank you, Judge.

8 THE COURT: Welcome.

9 [Court recessed at 4:33 p.m., until 6:17 p.m.]

10 [Outside the presence of the jury.]

11 THE COURT: All right. We are back in on C-345584-1,
12 State of Nevada versus Ted Michael Donko. He's present with both
13 attorneys, Mr. Shaygan and Mr. Hauser. Deputy district attorneys
14 Ms. Rose Goodman and Mr. Lexis are also present.

15 [Jury reconvened at 6:18 p.m.]

16 THE COURT: All right. Ladies and gentlemen, we are
17 back on the record in State of Nevada versus Ted Michael Donko.
18 He's present with both attorneys present. The deputy district
19 attorneys are present.

20 Do the parties stipulate to the presence of the jury?

21 MR. LEXIS: Yes, Your Honor.

22 MR. HAUSER: Yes, Your Honor.

23 THE COURT: Thank you.

24 Has the jury selected a foreperson?

25 JUROR NO. 8: That would be me, Your Honor.

1 THE COURT: Okay. And has the jury reached a verdict,
2 yes or no?

3 JUROR NO. 8: We have.

4 THE COURT: Okay. Can you please hand the form to my
5 marshal. Thank you.

6 The clerk will now read the verdict into the record, please.

7 THE CLERK: Yes, Your Honor.

8 District Court, Clark County, Nevada, State of Nevada,
9 Plaintiff, versus Ted Michael Donko, Defendant, Case Number
10 C-19-345584-1, Department 6, verdict:

11 We, the jury in the above entitled case, find the defendant,
12 Ted Donko, as follows:

13 Count 1, Battery With Use of a Deadly Weapon, Resulting
14 in Substantial Bodily Harm, Jonathan Sanchez: Guilty of battery
15 with use of a deadly weapon resulting in substantial bodily harm.

16 Count 2, Battery With Use of a Deadly Weapon, Resulting
17 in Substantial Bodily Harm, Fernando Espinoza: Guilty of battery
18 with use of a deadly weapon resulting in substantial bodily harm.

19 Count 3, Attempt Murder With Use of a Deadly Weapon,
20 Jonathan Sanchez: Guilty of attempt murder with use of a deadly
21 weapon.

22 Count 4, Attempt Murder With Use of a Deadly Weapon,
23 Fernando Espinoza: Guilty of attempt murder with use of a deadly
24 weapon.

25 Count 5, Attempt Murder with Use of a Deadly Weapon,

1 DeAndre Woods: Guilty of attempt murder with use of a deadly
2 weapon.

3 Count 6, Assault With a Deadly Weapon, DeAndre Woods:
4 Guilty of assault with a deadly weapon.

5 Count 7, Discharging Firearm at or Into Occupied
6 Structure, Vehicle, Aircraft, Watercraft: Guilty of discharging
7 firearm at or into occupied structure, vehicle, aircraft, or watercraft.

8 Dated this 13th day of February, 2020, Foreperson.

9 Ladies and gentlemen of the jury, is this your verdict as
10 read, so say you one, so say you all?

11 THE JURY: Yes.

12 THE CLERK: Thank you.

13 THE COURT: Do either parties desire to have the jury
14 polled?

15 MR. LEXIS: No, Your Honor.

16 MR. HAUSER: Yes.

17 THE CLERK: Juror Number 1, is this your verdict as read?

18 JUROR NO. 1: It is.

19 THE CLERK: Juror Number 2, is this your verdict as read?

20 JUROR NO. 2: It is.

21 THE CLERK: Juror Number 3, is this your verdict as read?

22 JUROR NO. 3: It is.

23 THE CLERK: Juror Number 4, is this your verdict as read?

24 JUROR NO. 4: It is.

25 THE CLERK: Juror Number 5, is this your verdict as read?

1 JUROR NO. 5: It is.
2 THE CLERK: Juror Number 6, is this your verdict as read?
3 JUROR NO. 6: It is.
4 THE CLERK: Juror Number 7, is this your verdict as read?
5 JUROR NO. 7: It is.
6 THE CLERK: Juror Number 8, is this your verdict as read?
7 JUROR NO. 8: It is.
8 THE CLERK: Juror Number 9, is this your verdict as read?
9 JUROR NO. 9: It is.
10 THE CLERK: Juror Number 10, is this your verdict as
11 read?
12 JUROR NO. 10: It is.
13 THE CLERK: Juror Number 11, is this your verdict as
14 read?
15 JUROR NO. 11: It is.
16 THE CLERK: Juror Number 12, is this your verdict as
17 read?
18 JUROR NO. 12: It is.
19 THE CLERK: Thank you.

20 [Proceeding concluded at 6:22 p.m.]

21 ///

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23 ATTEST: I do hereby certify that I have truly and correctly
24 transcribed the audio/video proceedings in the above-entitled case
25 to the best of my ability.


Shawna Ortega, CET*562

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TED MICHAEL DONKO,) No. 83037
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
)

DARIN IMLAY Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610 Attorney for Appellant	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 rd Floor Las Vegas, Nevada 89155 AARON FORD Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538 Counsel for Respondent
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 16 day of November 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

TED MICHAEL DONKO, #1080899
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

BY /s/ Rachel Howard
Employee, Clark County Public Defender's Office